COOPERATION WITH NATIONAL JUDGES IN THE FIELD OF EU ENVIRONMENTAL LAW

ERA
Academy of European Law

European Commission

Trainers Manual
Module on EU Industrial Emissions

Table of contents

Annexes

I. Introduction

This training module on 'EU Law on Industrial Emissions', developed by ERA on behalf of the European Commission, is addressed to judicial training institutes, networks of judges, trainers and end users of European Union member states wishing to organise training sessions in the area of EU law on industrial emissions.

Industrial activities play an important role in the economic well-being of Europe, contributing in a significant way to sustainable growth. However industrial activities also have a significant impact on the environment. The largest industrial installations account for a considerable share of the total emissions of key atmospheric pollutants and also have other important environmental impacts, including emissions to water and soil, generation of waste and the use of energy.

This was pointed out by the European Commission in its Communication "Towards an improved policy on industrial emissions", where it stated that "the largest industrial installations account for a considerable share of total emissions of key atmospheric pollutants (83% for sulphur dioxide (SO2), 34% for oxides of nitrogen (NOx), 43% for dust and 55% for volatile organic compounds (VOC)). They also have other important environmental impacts, including emissions to water and soil, generation of waste and the use of energy."

The impact assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on industrial emissions (IED) confirmed that the health and environmental benefits calculated to accrue from an enhanced take up of best available techniques (BAT) would greatly exceed the costs that would be associated with the installations in compliance with the directive. Within the framework of the impact assessment, the Commission carried out calculations on the benefits depending on the current performance of BAT-based permitting for a region or sector. The findings of this assessment concluded that, for example, for large combustion plants the EU-wide net benefits would be €7 - 28 billions per year, including the reduction of premature deaths/years of life lost by 13,000 and 125,000 respectively (excluding any additional environmental benefits such as reduced eutrophication and acidification).

It is therefore clear that there is a very high potential for achieving environmental benefits through effective industrial emissions legislation and the correct implementation thereof. For the latter, the role of national judges cannot be overestimated as they are the ones who will have to make decisions in cases in which this and other associated legislation is either challenged or disputed.

The training module is structured as a 'training package' and includes information on the programme and methodology to be employed and the training material necessary for setting up a workshop on EU law on industrial emissions.

1. Objectives

The training module addresses judges dealing with environmental issues (mainly administrative judges) with previous general, and in certain cases specific, knowledge regarding the subject. The module will provide judges with relevant information on the latest developments of the EU environmental law *acquis*, relevant jurisprudence of the Court of Justice of the EU and an in-depth analysis of the topic with a special focus on the IED and its new elements. This training module will also assist national judges to apply, in detail, the relevant EU instruments.

The objectives of the training are:

- to enable understanding of the new legislative instruments of the IED, in particular the BAT conclusions
- to raise awareness of the links between different pieces of industrial emissions legislation (in particular IPPC Directive/IED and NEC);
- to enable understanding of the preliminary ruling procedure;
- to enable understanding of basic technical issues, especially regarding large combustion plants;
- to foster dialogue between judges of different national backgrounds, in particular in the area of inspections and penalties;
- to promote contacts between national judges, central authorities and the judges' professional associations.

After this training on EU law on industrial emissions law, participants (national judges) will have a better knowledge of the EU instruments presented. They will have gained a better understanding of the legal aspects and the novel instruments introduced by the IED. Above all, they will be in the position to apply actively the EU rules transposed into their respective national legislations. They will also have had an excellent opportunity to exchange views regarding implementation practices in their respective member states

2. Structure

The workshop implementing the training module is designed to last 2.5 days.

The training module consists of 14 interrelated but self-standing units. These units can be combined into an implementing workshop depending on the prior knowledge of the participants, the time available and the specific training approach.

- Unit 1: Opening session – setting the scene
- Unit 2: Relevance of EU law and procedures of the CJEU for a domestic judge
- Unit 3: Case-study I: Reference for a preliminary ruling in a case related to industrial emissions
- Unit 4: The new Industrial Emissions Directive (IED)
- Unit 5: Best available techniques (BAT) conclusions

- Unit 6: Enforcement of EU and national law on industrial emissions with focus on inspections and penalties
- Unit 7: Role-play exercise: simulation of an administrative procedure resulting in penalties being imposed
- Unit 8: Large combustion plants and their specific situation
- Unit 9: Cross-border communication between judges and authorities in environmental matters
- Unit 10: Case-study II: Questions regarding permitting procedures of an installation falling under the scope of the new Industrial Emissions Directive (IED)
- Unit 11: The new Industrial Emissions Directive and public participation
- Unit 12: Exchange session on industrial emissions
- Unit 13: Access to e-EU law
- Unit 14: Closing session – evaluation of the workshop

The varying training methods that can be used in future workshops based on this material will also be presented in the module, together with recommendations on how and in which part of the training they may be best employed. Face-to-face presentations can be combined with practical exercises requiring the active contribution of participants, IT-supported learning, allowing participants to familiarise themselves with available e-justice tools and interactive sessions promoting the exchange of good practice and experience.

II. Methodology

1. Time frame

The workshop is designed to last approximately 2.5 days. The exact structure and length will of course be decided by the training providers.

Elements that should be taken into account in each instance when finalising the workshop programme and deciding on the allocation of time between the different sub-sessions include the need to effectively cover all the main features of the subject matter and provide sufficient time for participants to ask questions and interact with the trainers and with each other. The fact that long sessions have proven to be less effective in adult training should be borne in mind. Frequent breaks or changes in teaching style should therefore be introduced in the workshop.

> ➢ An indicative time allocation for each unit will be provided in Part IV of this trainer's manual.

2. Trainer profiles

Crucial for the success of the training workshop is the selection of trainers. It has been proven that trainers with a common professional background to that of the participants tend to have a better understanding of their training needs and be more effective when addressing them. For this reason, the composition of the target group is a factor to be considered when selecting the trainers of an implementing workshop.

It is also important to identify the right trainer for each unit. In the units where the emphasis is on practical issues, the involvement of a practitioner, lawyer or judge with personal experience in the issue would be ideal. If the focus of a presentation is the transmission of information or the introduction to concepts or a broader area of law, an academic or a suitable policy officer could also constitute a good option.

> ➢ More concrete input on the trainer profiles seemingly best fitting to each unit will be provided in Part IV of this trainers' manual.

In addition to professional qualifications, the quality of an implementing workshop will also depend on the individual trainers' didactic competences and pedagogical skills. Trainers should not only be knowledgeable, but also able to effectively transmit information, assist end users in developing new skills and motivate them to actively follow the training. They would have to provide the necessary information in a clear and structured manner, highlight the links between participants' daily work and the issues being discussed, retain some flexibility in order to adapt to the specific needs and interests of the end users attending the workshop as they become apparent and be open and encouraging in discussing and exchanging views with them in the course of the session.

Other skills that potential trainers should ideally possess and which should be considered are trainers linguistic skills when workshops are international and their familiarity with IT products, as the use of technology would be required in at least some parts of the training (IT-training sessions, use of PowerPoint or other audio-visual material, the e-learning course, etc.).

For the successful implementation of the workshop and in order to better address participants' training needs, some diversity among the trainers should be sought. Variety between speakers professional backgrounds, gender and, in the context of cross-border training, nationality would enrich the event, offering different perspectives on the issues, employing different teaching methods and ensuring a more comprehensive analysis of industrial emissions law in Europe.

Finally, although not always easy to assess, the potential trainers personal motivation could be a factor worth considering. For the implementation of a workshop on the basis of the training module, significant flexibility and commitment, as well as the willingness to interact with end users is expected from the trainers. Engaging experts, who have an interest in the project and are prepared to make the necessary effort for a successful outcome, would bring an added value to the workshop, while further motivating the participants.

Criteria for selecting the workshop trainers:

- Subject and objectives of each sub-session
- Didactic competences and pedagogical skills
- Linguistic and IT skills
- Professional background similar to that of the workshop's participants
- Diversity in the group of trainers
- Motivation

3. Teaching methods

- **Frontal (face-to-face) presentation**

The optimal method for the provision of a large amount of information in a limited period of time is face-to-face presentation, conducted in plenary. This method provides the trainer with the necessary time and flexibility to structure and present the content of the sub-session as s/he sees fit.

Supporting material such as outlines and PowerPoint or other presentation tools should be employed during the lecture. This would not only help participants to follow the presentation better, but constitute as well a reference document for the future, should end users wish to review the main issues of the sub-session.

One of the objectives of the workshop is to familiarise participants with existing legislation. In this context, reference to the material included in the user pack should

be made throughout the lecture and participants should be encouraged to go through the legal texts, identify the provisions and acquire a better understanding of their structure and applicability.

Enriching the lecture with practical examples could also be a means of emphasising the link between theory and practice and better illustrating the application of the various legal instruments. Brief exercises or questions could also be formulated by the trainers, requiring participants to reflect and discuss them before presenting the answer. Trainers would thus not only create an atmosphere of dialogue within the group, but also assess whether the concepts have been properly explained.

Time for discussion or Q&A sessions should in all cases be ensured for end users wishing to ask for clarification or further information. Depending on the content and structure of each lecture, questions may be raised during the presentation or in a subsequent discussion session moderated by the trainer or the workshop leader.

Although the key role in front presentations is played by the trainer, end users should also be encouraged to actively contribute to the different sub-sessions. Participants learn not only from the provision of training per se, but also from hearing questions and problems they have not yet found themselves confronted with. For this reason it is important that all end users attending the workshop are encouraged and feel comfortable enough to share thoughts and ideas and contribute their own experiences. This element is of particular importance in international workshops, where participants have the possibility to expand their knowledge with information on the application of EU environmental law in other member states, learning from each other.

- **Workshop exercises**

In addition to information on the EU legal framework, however, the training also aims at providing participants with some practical experience in the particularities of the cases on industrial emissions.

In order to further highlight issues requiring special attention and allow participants to develop specific skills, it is important to ensure their involvement in this part of the training. For this reason, specially designed workshop exercises will complement each thematic unit. Another advantage of this method is that the preparation of an exercise constitutes an interactive way of learning. After having listened to face-to-face presentations or read background material, participants would appreciate a change of presentation technique.

- Case studies prepared in working groups

During the workshop exercises, participants will be given the opportunity to use their skills and knowledge to solve case studies related to industrial emissions issues.
The exercise should start with a brief session in plenary, with a presentation by the trainer or the workshop leader of the organisational aspects of the exercise. A brief

introduction to the case studies and the main issues end users should deal with could also be included.

Participants should subsequently be divided into smaller working groups and working space provided for each of them. Working in smaller groups has significant advantages for participants: the possibility to focus on case studies will enable them to deepen their recently acquired knowledge by applying it to concrete cases. This approximates a real-life scenario and can constitute valuable experience for the future. The working group format would allow participants to be actively involved in the debate and improve their communication skills.

As one of the key objectives of the exercise is the exchange of opinion between end users, it is important that the workshop leader allocates participants to the working groups to support this interaction: in international implementing workshops and as long as participants working languages allow it, end users from different member states or from jurisdictions with different legal traditions should be brought together in the working groups. If a workshop is organised as national judicial training, judges from different courts could be asked to work together. Further to solving the case, this diversity would allow participants to obtain better insights into how the questions would be dealt with and how the EU directives involved are applied in another country, by a different legal profession, in a different city or court.

- As three exercises (two case studies and one role-play exercise) are recommended for the workshops implementing this training module, altering the composition of the working groups in each exercise would be a way to further increase participant interactivity.

Depending on the time available, the trainer coordinating each exercise will have to decide whether all working groups should deal with all case studies or if specific case studies should be allocated to different groups in order to ensure that end users are able to thoroughly examine all issues.

Once the working groups have been set up, they should organise themselves, develop a working method and identify which member(s) of the group will be responsible for reporting the conclusions of their discussion to the other end users. The trainer leading the exercise should be present, following to a certain extent the interaction in each group, offer advice on time management, be available to provide clarification and answer questions and prepared to assist participants if they face major difficulties or their discussion becomes derailed.

When the groups have completed their work, all participants should come together again to discuss their conclusions. This will allow them to compare their solutions to the features of the case studies, get further ideas from their colleagues in the other groups and broaden their understanding of the subject matter.

To achieve the objectives of this closing discussion, it is important to ensure that all groups take the floor and present the results of their work. It would be most effective to discuss one case at a time, invite the rapporteur of one of the groups to present their conclusions and the main elements of their discussion and then ask the end users of the other groups for additional comments, different opinions etc. In conclusion, the trainer should summarise the main points raised in the discussion and give his own feedback, so that participants can confirm whether they successfully dealt with the case or whether there could be further improvement.

- Role-play

The technique for the role-play exercise is the staging of a mock trial. In this training module the participants will be confronted with the situation of a number of imaginary industrial installations falling under the scope of the relevant directives with different problems in implementation, which may lead to judicial review.

The participants will be asked to take the different roles of the various parties involved, in simulation of an administrative procedure resulting in penalties being imposed. The trainer will need to explain to the participants how the matter resulted in this administrative procedure. In addition, the roles of the judge, the national environmental agency or authority responsible for authorising of the industrial installation and the operators of the industrial installation should also be explained. The steps in this imaginary administrative procedure must also be explained.

Depending on the objectives of the trainer, the role play exercise may be conducted formally or informally, holistically or in sections, involving few or many participants. Furthermore, the role play could be filmed and then used for the debriefing and final discussion.

- IT-supported learning

IT-supported learning can enhance the efficiency of training and give end users the opportunity to gain practical experience by making use of the possibilities the internet offers on issues related to environmental law generally, industrial emissions and cross-border cooperation in environmental matters. In this way, end users will have the opportunity of becoming familiar with the various EU websites in the area (such as the E-Justice Portal, the EJTN website, Eur-Lex, the Curia website etc.), where they can acquire further information and advice on how to apply the EU instruments covered by the workshop. By efficiently using these websites, participants will actively learn how to find the relevant legal texts and cases and receive assistance on the practical problems they may face when applying EU law in this area.

4. Documents

The documents to be made available at the training workshop consist of the contents of the users pack. The users pack will, in particular, include:

- blended e-learning material;
- the workshop reader;
- documentation set;
- workshop programme;
- list of participants;
- list of the trainers;
- CVs of the trainers;
- evaluation form;
- bibliography.

III. User pack: the function of the different elements of the training module

1. Introduction

The term "user pack" means the entire wealth of material that will be made available to the participants of an implementing workshop. This will be consist mostly of the blended e-learning material, training material (related legal documents, links to online sources, trainers contributions and case studies) as well as supporting documents, such as the workshop programme, the list of participants, workshop evaluation forms etc.

It is, of course, at the discretion of the workshop organisers and trainers to use the materials provided in the manner they deem most fitting and to also include additional documents where necessary. All key EU legal instruments required for the provision of training on EU law on industrial emissions are already part of the users pack, but as implementing workshops may be structured with a specific focus, further material could be of use.

The materials for inclusion in the users pack can and should be provided mainly in electronic format, either using a USB stick or by making the content available online and granting all workshop participants access to it. Material that needs to be regularly referred to during the workshop or that would make it easier to follow proceedings should be provided in hardcopy for ease of reference during the event:

- workshop programme;
- list of participants;
- trainers contributions;
- texts of the regulations to be analysed;
- case studies;
- evaluation forms.

➢ When presenting the material that should accompany each unit, distinction should be made between 'necessary material' to be provided in hardcopy and 'additional material' that should be included in the electronic documentation.

2. Blended e-learning

The training module has been structured to include 'blended learning' as a methodological approach, given that it combines the interactivity of face-to-face training during the implementing workshops with the flexibility provided by e-learning material. As the e-learning material has different functions and can be of use to the workshop participants at several stages of their learning process, it is important that they have access to it on different occasions: before the implementation of the workshop, in order to prepare for the meeting, while it takes place, in order to make

best use of the available material with the help of the trainers, after the workshop, as a point of reference for finding information on EU law on industrial emissions.

The key function of this e-learning material is to introduce end users to European law on industrial emissions. It will include:

- The main EU legal instruments and case law that will be analysed during the workshop which participants should go through before they attend the course, as well as the corresponding quiz to test their knowledge. The aim is not to replace the face-to-face sessions on these subjects but to complement them by ensuring that all participants have a common basic level of knowledge before they start and can make the most of the discussion to clarify issues in the face-to-face workshops.
- Access to the bibliography of legal instruments and other relevant source material to which participants can refer at any time.
- Access to the remainder of the e-learning version of the training module would be provided after the face-to-face workshop for participants to use as a refresher and to re-use with their colleagues alongside the face-to-face training materials.

Once the group of participants has been selected, they should receive information on how to access the e-learning material and be encouraged to go through its content 10-15 days before the implementation of the workshop. In this way, they will have the possibility to refresh or acquire some basic knowledge and prepare better for the workshop programme.

3. Background documentation

Legal texts will make up the large majority of the content of the training materials: treaty articles, regulations, directives, case law of the Court of Justice of the European Union etc. will constitute the background to analysis in the workshop. A comprehensive collection of all background documents, which can be referred to after the conclusion of the workshop, should be included in the electronic documentation. Participants are likely to come back to these texts in order to refresh their memory, find a specific provision or judgment, and seek guidance or inspiration if confronted with a case on EU industrial emissions at a later stage. This format could also support an easy further dissemination of this material, which workshop participants could forward to their colleagues if requested.

Further to legal texts, links to online databases, tools and sources, such as the E-justice portal, Eur-Lex, Curia and other similar websites should as also be included as background material in the electronic documentation.

➢ Proposals on which specific material to include in this part of the users pack are included in Part d) on the analysis of each sub-session of the workshop.

The material should be provided in the language of the workshop. When international workshops are organised, links to the EU databases (such as www.eur-lex.europa.eu or www.curia.europa.eu) could be included, so that end users can access EU legal texts in the language of their choice. Further to their inclusion in the electronic documentation, providing the few documents in hard copy that are absolutely essential during the workshop is recommended. Being able to quickly find a provision, see the structure of a legal instrument, make notes etc. could help end users to better follow the training and further familiarise themselves with the legal instruments being discussed.

4. Workshop exercise material

Three workshop exercises are proposed for the workshops implementing the training module on 'EU law on industrial emissions'. Two of them are structured on the basis of case studies and one of them as a role play exercise. Preparatory material supporting the workshop exercises, such as the facts of the different cases that are to be discussed or additional legal texts that will be needed for solving the cases, must be provided for the participants in hardcopy during the workshop.

5. Trainer contributions

In addition to the background documents, every time an implementing workshop on 'EU law on industrial emissions' is organised, the trainers involved should be asked to prepare their own supporting material, in the form of PowerPoint presentations, outlines, notes or full texts of their lectures. Trainers should be free to structure the material supporting their presentations as they prefer. The main objective would be to help end users attending the workshop to better follow the presentation and, for this reason, emphasis should be given, in particular, to the provision of a clear structure. The trainers contributions could also be used as a reference document for identifying the main points of the subject matter.

Speakers contributions should additionally be included in the user pack. They should also be included in hardcopy in the documentation pack.

➢ Providing some kind of written support of the lectures is always recommended and for this reason always mentioned under 'necessary documents'. Especially an outline of the PowerPoint presentation reflecting the structure of the sub-session allows participants to better understand the structure and follow the lecture.

6. Additional documents

Further to the training material, a number of documents supporting the organisation of the workshop must be made available to participants. These would be of immediate and continuous use during the workshop and should therefore be provided in hardcopy.

The finalised workshop programme must be provided at the beginning of the training, allowing participants to plan accordingly and better understand the training flow. A list of all workshop participants should be provided, facilitating the interaction between end users attending the workshop. Moreover, by including certain contact details (professional position and postal address) participants are given the opportunity to maintain contact even after the conclusion of the workshop. Finally, in order to achieve an immediate evaluation of the workshop, a questionnaire seeking participant feedback on the workshop content, organisational features and overall effectiveness will be distributed.

IV. Organising an implementing workshop: structure, content and methodology

For the training module on 'EU Law on Industrial Emissions' and its implementing workshops, a structure on the basis of thematic units is proposed. Each thematic unit will focus on a specific topic of EU law in the area of industrial emissions. Each implementing workshop will thus consist of several units, ensuring the alternation of theoretical and practical parts. The final structure will, however, have to be decided taking into consideration end users prior knowledge and training priorities. With the addition of opening and closing units, serving both pedagogical and organisational purposes, an implementing workshop of 2.5 days could be designed as detailed below:

- Unit 1: Opening session – setting the scene
- Unit 2: Relevance of EU law and procedures of the CJEU for a domestic judge
- Unit 3: Case-study I: Reference for a preliminary ruling in a case related to industrial emissions
- Unit 4: The new Industrial Emissions Directive (IED)
- Unit 5: Best available techniques (BAT) conclusions
- Unit 6: Enforcement of EU and national law on industrial emissions with focus on inspections and penalties
- Unit 7: Role-play exercise: simulation of an administrative procedure resulting in penalties being imposed
- Unit 8: Large combustion plants and their specific situation
- Unit 9: Cross-border communication between judges and authorities in environmental matters
- Unit 10: Case-study II: Questions regarding permitting procedures of an installation falling under the scope of the new Industrial Emissions Directive (IED)
- Unit 11: The new Industrial Emissions Directive and public participation
- Unit 12: Exchange session on industrial emissions
- Unit 13: Access to e-EU law
- Unit 14: Closing session – evaluation of the workshop

Unit 1: Setting the scene

Short description of the contents

The workshop should always start by welcoming the participants and providing a brief introduction and explanation of the contents of the programme.

General objectives

The main objective of this first session is to welcome trainers and participants to the workshop, to set the scene by reminding them of the framework of the training course and to encourage their interaction and active participation in the course.

Specific learning points

- **Introduction of participants and trainers**

The opening session should also be used in order to allow participants to introduce themselves, present their national and professional background and illustrate their expectations from the workshop. In this way, end users will be familiar with addressing the group, which should facilitate their active participation in the following sessions and they will also get to know their colleagues background a little better. Making trainers and participants aware of which nationalities and professional groups are represented in the workshop can be of great relevance in the discussion and an asset in ensuring an effective exchange of information and experience. The possibility to discover from participants the experience which they bring with them to the training course and what they are primarily seeking to achieve by their participation could help the workshop leader to better adapt the programme to meet participants specific needs, by emphasising certain aspects, making adjustments on the time allocated in the different sub-sessions, etc.

> ➢ This may be achieved by inviting participants to ask a key question they expect to see addressed during the workshop or to indicate which element made them apply for the course.

- **Presentation of the workshop's programme**

The workshop should include at the beginning a presentation of its programme, scope and objectives. The focus of each unit will be indicated and the expected contribution of the participants in each part of the programme emphasised. It is important that end users realise the goal of each unit and the flow of the workshop programme, in order to better equip them to follow the discussions and make sure they do not miss the opportunity to raise questions or clarify any ambiguity.

- **Presentation of the training material**

The opening session is also the opportunity to present the material included in the user pack and explain its function, so that end users may use it throughout the workshop. The content of the electronic documentation should be outlined (all related legal texts, links to online sources, suggested solutions to the case studies, etc.) and explanations provided on the documents that will have been made available to the participants in hardcopy for reference during the workshop (e.g. trainers presentations and outlines, key legal texts, the case studies for the workshop exercises, documents such as the list of participants, the workshop assessment tools etc.).

- **Presentation of the workshop's organisational aspects**

Further to this, all logistical aspects of the workshop will be presented. The locations that will be used during the workshop for the different sessions, the exercises and the lunch and coffee breaks will be indicated, the possibility to use computers, Wi-Fi, a library, a business station etc. laid out and information on the organised lunches and dinners provided. It is important here to ensure that end users are reminded and able to profit from all measures taken to facilitate their participation in the workshop and of the importance of the joint activities in allowing a less formal interaction between trainers and fellow participants.

Methodology

Participants will be in plenary; everyone is invited to introduce themselves. The programme of the workshop will be presented by the leader of the workshop.

After welcoming participants and trainers to the workshop, they will be given the opportunity to introduce themselves and express their expectations regarding the workshop. This will improve the atmosphere of the workshop from the very beginning, which is a key element for its success. Participants are more likely to be active during the event if they know their colleagues' backgrounds.

Furthermore, the outline and main objectives of the workshop will be presented. This introduction will contain information on both the programme and the logistics (e.g. which rooms will be available for the participants during the workshop, library, availability of computers and Wi-Fi, coffee breaks and meals, evening programme).

Duration

The time allocated to the opening session will depend on the number of participants attending the workshop. Taking into account that the workshop should ideally have 20 to 30 participants, the opening session should last approximately 45 minutes, in order to ensure sufficient time for all trainers and participants to present themselves and for the provision of all necessary information on the event.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	The final version of the workshop programme
02	The list of trainers
03	Trainers CV's
04	List of participants

The workshop leader should demonstrate the entire user pack in this unit, including the electronic documentation, in order to inform participants of all the different features of the pack.

Trainer profile

The opening session will be held in plenary and coordinated by the workshop manager, the person responsible for ensuring the coherent management of the workshop. There would be an added value in assigning the role of the 'workshop manager' to the person responsible for the organisation of the workshop. He or she would be most suitable to present the programme's structure and main objectives, having made all related decisions and given priority to specific features of the training over others.

Unit 2: Relevance of EU law and procedures at the CJEU for a domestic judge

Short description of the contents

This session is not exclusively related to industrial emissions, it deals more with horizontal aspects and is insofar of particular relevance for all environmental fields. In this session, an introduction to the relevance of EU environmental legislation for national legislation and national court decisions in general (direct effect of EU law) should be given. Moreover, the role of a national judge in the European judicial system, and in particular his/her role in application of EU law, should be explained in detail. The preliminary reference mechanism of national courts to the CJEU should be explained in detail. The infringement procedure of the European Commission should also be mentioned.

General objectives

Participants from the national judiciary/ies should increase their knowledge on:

- the relevance of EU environmental law for member states and the national courts with a short introduction to the concept of direct effect;
- the role of a national judge within the European judicial system;
- the significance and procedure for requests for preliminary references from national courts to the CJEU;
- the "curing" system of the infringement procedure on the basis of the presentation of infringements in EU environmental law by selected topics and countries.

Specific learning points

Participants will learn the details and effects of the infringement procedure on the implementation of environmental law provisions resulting from European Commission intervention under Articles 258 TFEU ff. They will be given instruction on how best to construe the interpretative case law of the CJEU generated using the preliminary references mechanism under Article 267 TFEU.

Methodology

This unit should be conducted as a frontal presentation in plenary. The order in which the different points of the unit are presented should be defined by the trainer. Examples demonstrating the preliminary reference mechanism in practice or the cycle and duration of the infringement procedure may be given by the trainer. The subsequent discussion should be moderated either by the trainer or the chair of the event.

Duration

The time allocated to this unit will be approximately 45-60 minutes and should include some time for discussion with the participants.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	Text of Articles 258-260 and 267 TFEU
03	ECJ information note on references from national courts for a preliminary ruling (2009/C 297/01)
04	Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling procedure (OJ C 338 of 6 November 2012, p. 1)

- **Additional material (to be included in the electronic documentation – USB stick):**

05	**Selected CJEU Case Law**
06	Case 26/62 *Van Gend & Loos* [1963] ECR 1.
07	Case 6/64 *Costa v Enel* [1964] ECR 585.
08	Case 41/74 *van Duyn* [1974] ECR 1337.
09	Case 283/81 *Cilfit and Others* [1982] ECR 3415
10	Case 314/85 *Foto-Frost* [1987] ECR 4199
11	Case 222/86 *Heylens and others* [1987] ECR 4097
12	Case 247/87 *Star Fruit* v *Commission* [1989] ECR 291
13	Case C-415/93 *Bosman* [1995] ECR I-4921
14	Case C-99/00 *Lyckeskog* [2002] ECR I-4839
15	Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835
16	Case C-350/02 *Commission* v *Netherlands* [2004] ECR I-6213
17	Case C-461/03 *Gaston Schul Douane-expediteur* [2005] ECR I-10513

18	Case C-53/03 *Syfait* [2005] ECR I-4609
19	Case C-304/02 *Commission* v *France* (small fish) [2005] ECR I-6263
20	Case C-466/04 *Acereda Herrera* [2006] ECR I-5341
21	Case C-344/04 *IATA and ELFAA* [2006] ECR I-403
22	Case C-221/04 *Commission* v *Spain* [2006] ECR I-4515
23	Case C-380/05 *Centro Europa 7* [2008] ECR I-349
24	Case C-210/06 *Cartesio* [2008] ECR I-9641
25	Joined Cases C-261/08 and C-348/08 *Zurita García and Choque Cabrera* [2009] ECR I-10143
26	Case C-445/06 *Danske Slagterier* [2009] I-2119
27	Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667
28	Case C-240/09 *Lesoochranárske zoskupenie* [2011] ECR I-1255
29	Case C-282/10 *Dominguez* [2012] ECR I-0000
30	Case C-374/11 *Commission* v *Ireland* of 19 December 2012
31	Case C-394/11, *Belov* [2013] ECR I-0000
	Selected Articles
32	Ludwig Krämer, Environmental judgments by the Court of Justice and their duration, Journal for European Environmental and Planning Law 2008, 263.

Trainer profile

The trainer/facilitator in this session should be, where possible, a suitably experienced member of staff of the Court of Justice; a judge, advocate general or experienced legal secretary. Alternatively, an expert from DG Environment, European Commission, an academic with practical experience of the application of EU environmental law or an official from a relevant national public authority who is familiar with the infringement and/or preliminary rulings procedure could lead this session.

Unit 3: Case-study I: Reference for a preliminary ruling in a case related to industrial emissions

Short description of the contents

During this unit, a case study on European industrial emissions raising difficult questions of EU law will be presented. On the basis of the particular set of facts, the national court decides that a reference to the CJEU is desirable and necessary. This case study will enable judges to actually practice referring a case to the Court of Justice. This case study should be based on a real case, namely a request for a preliminary ruling. A perfectly suitable example is the case Case *Jozef Križan and Others v Slovenská inšpekcia životného prostredia* (C-416/10). This case arose when the regional urban planning service of Bratislava (Slovakia) adopted an urban planning decision relating to the establishment of a waste landfill site in a trench used for the extraction of earth for use in brick-making. An action before the Slovak courts and the Najvyšší súd Slovenskej republiky (Supreme Court of Slovakia) resulted in the CJEU being asked to explain the extent of the public's right to participate in procedures for the authorisation of projects having significant effects on the environment. In its ruling, the court noted, inter alia, that the purpose of the IPPC directive, namely to ensure pollution prevention and control, could not be attained if it were impossible to prevent an installation which may have benefited from a permit awarded in infringement of that directive from continuing to function, pending a definitive decision as to the lawfulness of that permit. Consequently, the directive requires that members of the public concerned should have the right to request the adoption of interim measures designed to prevent that pollution, such as temporary suspension of the disputed permit.

General objectives

Participants will be able to deepen their knowledge regarding the preliminary ruling procedure (Unit 2) in a practical manner and also to further their grasp of the knowledge gained during the following units on the new IED, permitting and public participation issues through the medium of a case study.

Specific learning points

Participants should understand the practice of the Court and how the national courts can contribute to the successful implementation of EU law by actually discussing a real case scenario. This case study will enable judges to simulate actually making a reference to the Court of Justice. Participants will actively apply EU law on a given case and incidentally improve their communication skills.

Methodology

The trainer will present the case by raising a difficult point on the interpretation of the IED and NEC directives. After the short presentation, participants will be divided into groups of 6-8 persons. The groups will discuss the case on the basis of the directive.

It is important for the judge to understand that it helps the Court if the referring judge states clearly what s/he perceives to be the point that requires a decision and additionally that s/he offers his or her opinion on the correct ruling.

Participants should draft the terms of the reference in their working group. After the group discussion, participants will return to the plenary. Each group will have a rapporteur to explain the results of their discussion and the trainer will comment on their findings.

Participants will receive the facts of the case and the relevant legislation and work closely with the Court of Justice's information note on references from national courts for a preliminary ruling. At the end of the session, participants will receive a hand-out providing the reference for the preliminary ruling.

Time frame

The presentation of the case study should take15 minutes; afterwards participants will divide into groups. The discussion on the case will take 60 minutes, the following discussion in the plenary including the debriefing will take another 45-60 minutes.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	Presentation of the factual background of the case study
02	Case study notes and solution
03	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on industrial emissions
04	DIRECTIVE 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 January 2008 concerning integrated pollution prevention and control (Codified version)
05	ECJ information note on references from national courts for a preliminary ruling (2009/C 297/01)
06	Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling procedure (OJ C 338 of 6 November 2012, p. 1)

Trainer profile

The person presenting the case study should be an expert on references to the Court of Justice in environmental matters, and – if possible – a judge who has practical experience in this field. The expert should be available during the group discussion and

to assist participants if they need him/her. At the debriefing, the expert should be available for an interactive discussion with all the participants.

Unit 4: The new Industrial Emissions Directive (IED)

Short description of contents

In this unit, the new IED should be introduced and explained. It should include background information on the seven existing directives relating to industrial emissions which were recast in this new instrument on industrial emissions.

Also, as there is a certain connection between the new IED and the Directive on National Emission Ceilings for certain pollutants (NEC-Directive), it is foreseeable that certain issues may arise regarding the implementation of both of them at the same time. The CJEU dealt with this issue in the framework of a preliminary ruling after a situation in which different environmental NGOs appealed against the IPPC permits for certain new installations (Joint Cases C-165/09, C-166/09 and C-167/09 *Stichting Natuur en Milieu and others v Gedupeerde Staten*). The appeals were based on the argument that if the new permits are granted, the Netherlands will not be able to meet its national emission ceilings as set out in the NEC Directive, even if BAT is fully applied. This issue should therefore be mentioned during the presentation on the new IED.

General objectives

Participants will be given the basic information regarding the European legal framework on air quality and the legislative background of the new IED. They will also be introduced into the structure of the new directive, which is essential in order to better understand the specific issues relates to industrial emissions.

Specific learning points

In this unit, participants will be able to improve their knowledge and understanding of the IED, the legislative process behind the adoption of the directive and the novel legal instruments included therein. The specific learning points therefore should be the following:

- EU legal framework on air quality and on industrial emissions
- Revision of the IPPC Directive, adoption of the IED
- Structure of the IED
- Essential provisions of the IED
- Interrelations with other legal instruments (in particular the NEC-Directive)

Methodology

As the focus of this unit lies in the provision of information and a number of different elements of IED need to be covered, the best option would be to organise it as face-to-face frontal training.

The scope of this unit is rather large and a great deal of information that is required for effectively comprehending the rest of the programme needs to be provided. For this

reason it is essential that this unit is effectively structured. The main features of the directive should be clearly presented in a logical order. Participants must acquire the knowledge and skills that will allow them to use this legal instrument if confronted with a case on industrial emissions. In order to achieve this, it is essential that the trainer ensures that there is sufficient time for participants to raise questions or discuss any unclear points in relation to the IED.

Duration

The duration of this sub-session should be 60-90 minutes (including lecturing time and discussion sessions with the participants).

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control)
03	DIRECTIVE 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 January 2008 concerning integrated pollution prevention and control (Codified version)
04	DIRECTIVE 2001/80/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants
05	DIRECTIVE 2000/76/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 December 2000 on the incineration of waste

- **Additional material (to be included in the electronic documentation – USB stick):**

01	COUNCIL DIRECTIVE 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations
02	COUNCIL DIRECTIVE 92/112/EEC of 15 December 1992 on procedures for harmonizing the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry
03	COUNCIL DIRECTIVE of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium

	dioxide industry (82/883/EEC)
04	COUNCIL DIRECTIVE of 20 February 1978 on waste from the titanium dioxide industry (78/176/EEC)
05	COMMISSION DECISION of 16 May 2011 establishing a forum for the exchange of information pursuant to Article 13 of the Directive 2010/75/EU on industrial emissions (2011/C 146/03)
06	DIRECTIVE 2012/18/EU of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso III)
07	DIRECTIVE 2008/50/EC 21 May 2008 on ambient air quality and cleaner air for Europe
08	DIRECTIVE 2004/107/EC of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (4th daughter directive)
09	DIRECTIVE 2001/81/EC of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (NEC Directive)

Trainer profile

As this constitutes one of the most important sessions of the workshop, it is particularly important to identify a trainer with strong didactic competences and the ability to clearly transmit information and explain complex concepts.

Ideally, the trainer should have some practical experience matching that of the end users attending the workshop, but of utmost importance would be his or her sound knowledge of the IED and the wider legal context in this area. An expert from DG Environment, EU Commission could thus constitute a good option, particularly for workshops organised on a Europe-wide basis. Alternatively, an experienced professor of law represents an appropriate substitute.

Unit 5: Best available techniques (BAT) conclusions

Short description of content

As pointed out in the Communication of the European Commission "Towards an improved policy on industrial emissions", one of the main shortcomings regarding the implementation of the IPPC Directive was the low uptake of BAT which provided grounds for major differences in implementation practices. It is clear that the intention of the legislator was to give the BAT conclusions (a new instrument in EU industrial emissions policy created and defined by the IED) a binding status with much more limited flexibility options and therefore this should be discussed in a separate presentation during the workshop.

General objectives

During this presentation, the participants will be given an introduction to the core element of the new IED and its binding status will be explained.

Specific learning points

Specific learning points during this presentation should be the following:

- BAT in comparison with the IPPC Directive
- Role of BAT conclusions in permitting under IED
- BAT information exchange
- Development of BAT conclusions
- IED Committee (article 75)
- IED Forum (art. 13)

Methodology

This unit should be held as a frontal presentation in plenary.

Time frame

The time allocated to this sub-session should be approximately 45-60 minutes and should include some time for discussion.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on industrial emissions
03	DIRECTIVE 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

	of 15 January 2008 concerning integrated pollution prevention and control (Codified version)

- **Additional material (to be included in the electronic documentation – USB stick):**

01	Regulation (EC) No 166/2006 of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (E-PRTR Regulation)
02	DIRECTIVE 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (EIA-Directive)
03	Commission Implementing Decision 2012/134/EU for the manufacture of glass
04	Commission Implementing Decision 2012/135/EU for iron and steel production
05	Commission Implementing Decision 2013/84/EU for the tanning of hides and skins
06	Commission Implementing Decision 2013/163/EU for the production of cement, lime and magnesium oxide

Trainer profile

Ideally the trainer should have some practical experience and sound knowledge of the IED and IPPC Directives and the wider EU Law legal context in this area. An expert from DG Environment, EU Commission could thus be a good option, particularly for workshops organised on a pan-European basis.

Unit 6: Enforcement of EU and national law on industrial emissions with focus on inspections and penalties

Short description of content

In Article 23, the IED introduces a requirement for member states to provide a system of environmental inspections. Member states are required to set up a system of environmental inspections and draw up inspection plans accordingly. This provision should be discussed during the workshop.
Also the penalties are essential tools in the effective enforcement and implementation of the environmental law *acquis* of the EU and are of great relevance for national judges working in the environmental field. This part of the presentation should be based mostly on the findings of the study on this issue by DG Environment, which was finalised in 2011.

General Oojectives

During this unit the participants should gain more knowledge of the system of environmental inspections. The presentation, however, should also be used as a tool to widely disseminate the compiled and well-structured information of the European Commission's study "Overview of provisions on penalties related to legislation on industrial installations in the Member States" along with its findings to national judges, who will be, in any case, one of the most relevant actors in the imposition of penalties within the framework of the implementation of the IED. Participants will be able to accumulate knowledge of the different practices in issuing penalties in the different member states, criteria for proportionality, effectiveness and dissuasiveness, and relevant jurisprudence for classifying penalties as proportionate, effective and dissuasive.

Specific learning points

- Environmental inspections according to article 23 IED
- Penalties in relation to environmental law
- Effectiveness, proportionality, dissuasiveness of the penalties
- Special penalties in relation to industrial emissions
- Administrative and criminal sanctions related to industrial emissions

Methodology

This unit should be held as a frontal presentation in plenary.

Time frame

The time allocated to this unit should be approximately 45-60 minutes and should include at least 15 minutes for discussion.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions
03	COM Study (October 2011): Provisions on penalties related to legislation on industrial installations, Executive Summary

- **Additional material (to be included in the electronic documentation – USB stick):**

01	COM Study (October 2011): Overview of provisions on penalties related to legislation on industrial installations in the Member States
02	COM Study (October 2011): Provisions on penalties related to legislation on industrial installations, Document on Good Practices, October

Trainer profile

The trainer should have some practical experience and sound knowledge of both topics: the new IED and the issuance of penalties. An environmental law professor or an expert from DG Environment, European Commission could thus constitute a good option.

Unit 7: Role-play: Simulation of an administrative procedure regarding an installation under IED and resulting in penalties being imposed

Short description of content

The participants will be presented with the situation of a number of imaginary industrial installations falling under the scope of the IPPC Directive/IED with different problems in the implementation of the directives (non-compliance with BAT, non-compliance with permit conditions, incidents and accidents, etc.) which may lead to judicial review. The participants will be asked to take the different roles of the various parties involved in an imaginary court hearing where the arguments will be presented and rulings handed down.

General objectives

In the framework of this session, participants will be provided with the opportunity to put into practice the information disseminated in Unit 6 on inspections and penalties via the methodological medium of the role-play exercise. For this specific activity, active participation of participants is needed which would animate the discussions greatly.

Specific learning points

Special consideration will be given to the proportionate, effective and dissuasive nature of penalties and, in particular, to the application of these principles vis-à-vis each other. The issue of whether a penalty can be effective and dissuasive while at the same time being proportional should be discussed and addressed in the form of legal argument. Moreover, the possibilities that exist for national judges to consider specific arguments in order to issue a judgement which will meet the three principles is a further example of a topic that might be explored further.

Methodology

The technique for the role-play exercise is the staging of a mock trial. The participants will be divided into three groups – one representing the judges; the second representing a national environmental agency or authority responsible for the authorisation of the industrial installation; and the third group representing the operators of this. Having been given time to read the case-study, the participants will also have time to prepare themselves. Information can be given secretly to individual participants to heighten the learning effect. The role play exercise could be filmed and then be used for the debriefing and final discussion.

Time frame

A role-play exercise needs sufficient time. First, the expert needs time to ‘prepare’ the participants to be active players. Secondly, organising the mock trial is a process that

requires a certain amount of time to ensure a degree of realism. For the presentation, a period of 90 minutes is foreseen. It is advisable that the role play exercise is not followed by another presentation, so that it could take up to 30 minutes more, if needed – a coffee break between this and the discussion of the results is, therefore, the best solution and can be combined. During the discussion of the results, key moments of the mock trial will be analysed by the expert in plenary, possibly with the additional help of the video/film. (The use of the video/film needs the express agreement of all the persons actively involved.)

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	Factsheets of the imaginary procedures
02	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on industrial emissions
03	DIRECTIVE 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 January 2008 concerning integrated pollution prevention and control (Codified version)

- **Additional material (to be included in the electronic documentation – USB stick):**

01	The Kolontár Report: CAUSES AND LESSONS FROM THE RED MUD DISASTER, Budapest, March 2011

Trainer profile

It is extremely important to have experts (preferably a judge) who have a broad experience in environmental cases, a strong legal background and psychological skills. The workshop trainer has to choose the players for the trial, lead the role-play process, stop the proceedings when appropriate, answer questions from participants, and choose the key moments when presenting the video/film. It is obvious that the success of this unit depends very much on having competent workshop trainers well versed in this kind of training exercise.

Unit 8: Large combustion plants and their specific situation

Short description of content

The implementation date of the provisions of the IED relevant to combustion plants (1 January 2016) is different to the general implementation date of the directive. The IED also introduces a number of flexibility measures for combustion plants. Based on the importance of the sector and its particular importance in relation to the IPPC Directive/IED installations, it is worth devoting a separate session to the issue of combustion plants.

General objectives

The wide range of industrial activities covered by the directives calls for a certain level of understanding of basic technical issues which can have legal consequences. Large combustion plants play an important strategic role in the energy security policy of member states. It is therefore proposed to provide a specific overview of this sector for participants.

Specific learning points

Participants will be able to obtain knowledge of the specific provisions of the IED on combustion plants and the flexibility measures provided for those installations such as transitional national plans, limited lifetime derogation, etc.

Methodology

This unit should be held as frontal presentation in plenary.

Time frame

The time allocated to this sub-session could be approximately 45-60 minutes and should include some time for discussion.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	DIRECTIVE 2001/80/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants
03	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention

	and control)

Trainer profile

Ideally the trainer should have some practical experience and sound knowledge of the directive 2001/80/EC and the new IED. An environmental law professor, legal practitioner or an expert from an environmental NGO could thus be a good option.

Unit 9: Cross-border communication between judges and authorities

Short description of content

Environmental problems and in particular contamination do not respect borders and it is therefore necessary that member states undertake all possible measures to ensure effective cooperation in the case of installations which are in a region where they can cause transboundary pollution. Article 18 and Article 26 of the IED (transboundary effects) make provision for the consultation of the neighbouring authorities in the case of such situations. Nevertheless, the issue still has the potential to result in legal conflict and training is recommended.

General objectives

Participants will be briefed on the current legislative framework and will be encouraged to exchange views on how to enhance cross-border communication in environmental cases.

Specific learning points

In this presentation different aspects of judicial cooperation in environmental cases should be highlighted and explained:

- Practical, related to actual court proceedings (serving of documents, taking evidence)
- General, related to EU policies in the areas of protection of the environment and creation of the European area of justice through cooperation

Methodology

This unit should be held as a frontal presentation in plenary.

Time frame

The time allocated to this unit could be approximately 45-60 minutes and should include at least 15 for discussion.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions
03	The United Nations Economic Commission for Europe (UNECE) Convention on

	Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention)

Trainer profile

Apart from training abilities and knowledge on EU environmental and industrial emissions law, the expert should have the necessary experience with cross-border communication between judges and authorities. A possible speaker could be a judge or an expert from the national authority with the relevant experience.

Unit 10: Case study I – Questions regarding permitting procedures of an installation falling under the scope of the new Industrial Emissions Directive (IED)

Short description of content

In this section a case study relating to a coal-fired power station which is intending to adapt the existing installation for co-incineration of waste will be presented.

General objectives

Via the case study, participants will be able to analyse a practical example relating to the different topics addressed previously, i.e. the implementation of BAT conclusions, the relation between the IPPC Directive/IED and NEC and public participation.

Specific learning points

Participants will be able to put into practice, drawing on their own experiences, the information obtained throughout the course of the previous sessions.

Methodology

The trainer will explain the factual background of the case. After the short presentation, participants will be divided into working groups of 6-8 persons. The groups should appoint a moderator and a rapporteur. The groups will discuss the case on the basis of the applicable directives.

After the group discussion, participants will reconvene in a plenary session. Each group will have a rapporteur to explain the results of their discussion. The trainer will comment on their findings during the debriefing of the case study. The trainer will also invite comments from other groups or individuals and seek to stimulate a debate where differences of opinion, approach or interpretation are apparent.

Time frame

The presentation of the case study should take 15 minutes; afterwards participants will divide into groups. The discussion on the case should take 60 minutes, the following discussion in the plenary including the debriefing should take another 30-45 minutes.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	Presentation of the factual background of the case study
02	Case notes and solution

03	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on industrial emissions

Trainer profile

The expert presenting the case study should be an all round expert of all aspects of EU law on industrial emissions and fully familiar with the ECJ case law in this field. The expert should have relevant experience in moderating discussions and should be available during the group discussion to assist participants if they need him/her. At the debriefing, the expert should be available for an interactive discussion with all the participants and capable of moderating such a discussion.

The cases will be distributed to the participants at the beginning of the workshop.

Unit 11: Public participation in the field of industrial emissions

Short description of content

The question of public participation in the field of industrial emissions could result in difficult situations which may also have relevance for national judges, for example in proceedings where a decision regarding the standing of a party must be made or when dealing with appeals against the granting of particular permits. As it is likely that many questions regarding public participation will arise in the near future regarding the participation of individuals or environmental organisations in the IED permitting procedure of industrial installations, this unit is considered to be of high importance.

General objectives

By completing this unit, participants will be able to improve their knowledge of the most recent jurisprudential developments in the field of public participation. Participants will be able to receive relevant information on the legislative schemes regarding public participation and access to justice in the IED.

Specific learning points

The objectives of this unit are the following:

- The origins of public participation in environmental matters (in particular the Aarhus Convention);
- Legislative developments effected under the framework of the IED;
- The latest jurisprudence of the CJEU in this field.

Methodology

This unit should be held as a frontal presentation in plenary.

Time frame

The time allocated to this sub-session could be approximately 45-60 minutes and should include some time for discussion.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer
02	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions
03	The United Nations Economic Commission for Europe (UNECE) Convention on

	Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention)
04	Directive 2003/35/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

- **Additional material (to be included in the electronic documentation – USB stick):**

01	DIRECTIVE 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
02	Joined cases C-165/09 to C-167/09, *Stichting Natuur en Milieu and Others v College van Gedeputeerde Staten van Groningen and College van Gedeputeerde Staten van Zuid-Holland*
03	Case C-473/07, *Association nationale pour la protection des eaux and rivières and OABA* (French poultry case)
04	Case C-237/07, *Dieter Janecek v Freistaat Bayern*

Trainer profile

Apart from training abilities and knowledge on EU environmental and industrial emissions law, the expert should have the necessary experience with issues of public participation in environmental matters. A possible speaker could be a judge experienced in public participation or an expert from an environmental NGO.

Unit 12: Exchange session on industrial emissions

Short description of content

During this unit the participants will get a chance to exchange their views and experience of EU legislation on industrial emissions. This is based on the assumption that both the transposition of the various pieces of EU legislation on industrial emissions as well as the respective jurisprudence is quite divergent in the member states.

General objectives

The main objective of the exchange session is to give participants the opportunity to learn about the experience of their colleagues from other jurisdictions with industrial emissions legislation and implementation practice. This exchange might play a role in contributing to a better and timelier implementation of EU legislation requirements.

Specific learning points

Specific aspects of the EU industrial emissions legislation particularly relevant for national legal practitioners

Methodology

The proposed methodology for this session is an open plenary discussion.

The session should be well structured by the moderator in order to ensure effectiveness. The workshop manager should encourage the participants to speak openly about their experience with this issue. It is, however, possible that there will be very little input from participants. The moderator of the unit should prepare some examples – e.g. case law from CJEU or a member state – to initiate some discussion.

Time frame

The duration of this session should be about 60-90 minutes, depending on the number of participants and the overall time available.

Trainer profile

The unit could be moderated by the workshop manager or one of the trainers invited to the workshop.

Unit 13: Access to e-EU law

Short description of the content

This session is not exclusively related to industrial emissions; rather, it aims to provide additional knowledge and is insofar of particular relevance for all environmental fields. In this session, a brief presentation of possibilities offered by the internet and other technologies with regard to EU law (EU environmental legislation and jurisprudence, data bases etc.) and justice systems across the EU will be given. There will also be explanations on how best to use the available search instruments and data bases.

General objectives

The participants from the national judiciary/-ies will become more aware of the internet tools available which will help them to find relevant information on EU law and justice systems across the EU.

Specific learning points

More specifically, participants will have the possibility to become familiar with the various EU websites (such as Eur-Lex, the Curia website, e-Justice Portal etc.), where they can acquire further information and advice on how to apply EU instruments. Participants will learn how to find the relevant legal texts and cases and receive assistance on the practical problems they may face when applying EU law in this area (e.g. when establishing contacts with foreign judges, making use of standardised forms, receiving information on other member state national laws etc.).

Methodology

This unit should be held as an IT-supported training, which will be combined with frontal presentation in plenary during which the trainer should use a computer to show useful functions. Where possible, all participants should have internet access so that they can experiment with the methods in real time. The order of presenting the different internet tools should be defined by the trainer. The trainer should demonstrate on a screen what the most important subpages are and what results can be achieved using the internet pages.

Duration

The time allocated to this unit could be approximately 20-45 minutes.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	PowerPoint presentation or outline provided by the trainer or a list of IT-tools relevant for the participants, including links and short description

Trainer profile

The trainer/facilitator in this session could be a training manager or a trainer of any other unit familiar with the IT-tools.

Unit 14: Closing session – evaluation of the workshop

Short description of content

In the final session of the workshop, conclusions will be drawn and participants will be invited to evaluate the event.

General objectives

Participants will provide feedback on the whole event, the preliminary information, the workshop documentation, the e-learning module and the usefulness of the workshop for their daily work.

Specific learning points

- Summing up the event
- Obtaining feedback
- Use the feedback and the evaluations to improve the training module (for organisers)

Methodology

Participants will be in plenary. Before the final discussion and evaluation of the event is actually opened, each participant should have already filled in the evaluation form. If possible, all participants, i.e. including the speakers and the leader of the workshop, should participate in this final evaluation session. The workshop manager should encourage the participants to speak openly about their impressions of the workshop.

Time frame

The closing session should take approx. 30-45 minutes.

Documentation

- **Necessary material (to be made available in hardcopy during the sub-session):**

01	Evaluation form

Trainer profile

The closing session will be chaired by the workshop manager.

Annex 1 - Template indicative workshop programme

Objective

The goal of this two and a half day workshop is to develop and raise understanding on the key legal aspects of EU Law on industrial emissions and to exchange views of judges from various Member States regarding this topic.

Key topics

- Relevance of EU law and procedures at the CJEU for the domestic judge
- The new structure of the IED and the links between IPPC/IED and NEC
- BAT conclusions
- Public participation
- Enforcement of EU and national law on industrial emissions with focus on inspections and penalties

Who should attend?

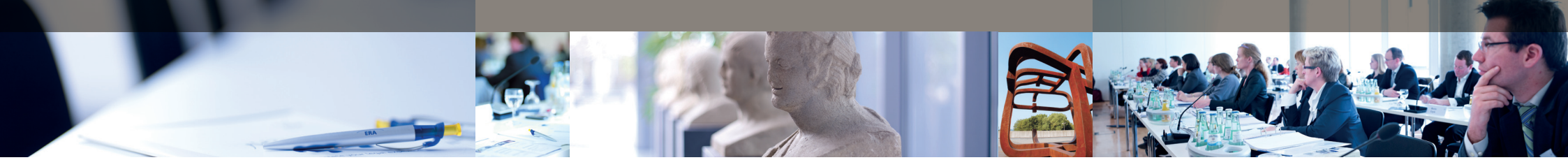
Speakers

WORKSHOP ON EU LAW ON INDUSTRIAL EMISSIONS

Venue:

Organiser:

Language:
English



Day I

08:45	Arrival and registration of participants
09:00	**Setting the scene**
09:30	**The relevance of EU Law and the procedures of the CJEU for the domestic judge**
10:30	Coffee Break
11:00	**Presentation of the Case-study I: Reference for a preliminary ruling**
11:30	**Case Study I:** Working groups
13:00	Lunch break
14:00	**Case Study I:** Discussion of the results
15:00	**The new Industrial Emissions Directive**
16:00	Coffee Break
16:30	**BAT conclusions**
17:30	End of the first workshop day

Day II

09:00	**Enforcement of EU and national law on industrial emissions with focus on inspections and penalties**
10:00	**Role-play: simulation of an administrative procedure resulting in penalties**
11:00	Coffee Break
11:30	**Role-play:** Discussion of the results
12:00	**Large combustion plants and their specific situation**
13:00	Lunch break
14:00	**Cross-border co-operation of judges**
15:00	**Presentation of the Case study II: Questions regarding permitting procedure**
15:30	Coffee Break
15:45	**Case-Study II:** Working groups
16:45	**Case-Study II:** Discussion of the results
17:30	End of the second workshop day

Day III

09:00	**Public participation**
10:00	**Exchange session on industrial emissions**
11:00	Coffee Break
11:30	**Access to e-EU law** • **EU environmental law on the internet** • **E-Justice Portal** • **Accessing the case law of the CJEU**
12:00	**Evaluation of the workshop**
12:30	End of the workshop

Programme may be subject to amendment.

Annex 2: Background materials to be contained in the users' pack

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. E-learning course

1.	E-learning course on EU Law on Industrial Emissions

3. Trainers' contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

4. Background Documentation – legal texts

A. The Role of the National Judge in the European Judicial System and the Procedures of the CJEU

	EU Documents	
1	Selected articles from the consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union, including Statute of the Court of Justice of the European Union (OJ C 83 of 30 March 2010, p.1)	Hardcopy
2	Rules of Procedure of the Court of Justice (consolidated version of 25 September 2012)	Hardcopy
3	Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling procedure (OJ C 338 of 6 November 2012, p. 1)	Hardcopy
	Selected CJEU Case Law	USB
4	Case 26/62 *Van Gend & Loos* [1963] ECR 1.	USB
5	Case 6/64 *Costa v Enel* [1964] ECR 585.	USB
6	Case 41/74 *van Duyn* [1974] ECR 1337.	USB
7	Case 283/81 *Cilfit and Others* [1982] ECR 3415	USB
8	Case 314/85 *Foto-Frost* [1987] ECR 4199	USB
9	Case 222/86 *Heylens and others* [1987] ECR 4097	USB
10	Case 247/87 *Star Fruit* v *Commission* [1989] ECR 291	USB
11	Case C-415/93 *Bosman* [1995] ECR I-4921	USB
12	Case C-99/00 *Lyckeskog* [2002] ECR I-4839	USB
13	Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835	USB
14	Case C-350/02 *Commission* v *Netherlands* [2004] ECR I-6213	USB
15	Case C-461/03 *Gaston Schul Douane-expediteur* [2005] ECR I-10513	USB
16	Case C-53/03 *Syfait* [2005] ECR I-4609	USB
17	Case C-304/02 *Commission* v *France* (small fish) [2005] ECR I-6263	USB
18	Case C-466/04 *Acereda Herrera* [2006] ECR I-5341	USB
19	Case C-344/04 *IATA and ELFAA* [2006] ECR I-403	USB
20	Case C-221/04 *Commission* v *Spain* [2006] ECR I-4515	USB

21	Case C-380/05 *Centro Europa 7* [2008] ECR I-349	USB
22	Case C-210/06 *Cartesio* [2008] ECR I-9641	USB
23	Joined Cases C-261/08 and C-348/08 *Zurita García and Choque Cabrera* [2009] ECR I-10143	USB
24	Case C-445/06 *Danske Slagterier* [2009] I-2119	USB
25	Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667	USB
26	Case C-240/09 *Lesoochranárske zoskupenie* [2011] ECR I-1255	USB
27	Case C-282/10 *Dominguez* [2012] ECR I-0000	USB
28	Case C-374/11 *Commission* v *Ireland* of 19 December 2012	USB
29	Case C-394/11, *Belov* [2013] ECR I-0000	USB
	Selected Articles	
30	Ludwig Krämer, Environmental judgments by the Court of Justice and their duration, Journal for European Environmental and Planning Law 2008, 263.	USB

B. EU Law on Industrial Emissions

	EU Documents: Industrial Emissions	
31	DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control)	Hardcopy
32	DIRECTIVE 2008/1/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 January 2008 concerning integrated pollution prevention and control (Codified version)	Hardcopy
33	DIRECTIVE 2001/80/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants	Hardcopy
34	DIRECTIVE 2000/76/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 December 2000 on the incineration of waste	Hardcopy
35	COUNCIL DIRECTIVE 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations	USB
36	COUNCIL DIRECTIVE 92/112/EEC of 15 December 1992 on procedures for harmonizing the programmes for the reduction and eventual	USB

	elimination of pollution caused by waste from the titanium dioxide industry	
37	COUNCIL DIRECTIVE of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry (82/883/EEC)	USB
38	COUNCIL DIRECTIVE of 20 February 1978 on waste from the titanium dioxide industry (78/176/EEC)	USB
39	COMMISSION DECISION of 16 May 2011 establishing a forum for the exchange of information pursuant to Article 13 of the Directive 2010/75/EU on industrial emissions (2011/C 146/03)	USB
	Related EU Documents: Industrial Emissions	
40	DIRECTIVE 2012/18/EU of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso III)	USB
41	DIRECTIVE 2008/50/EC 21 May 2008 on ambient air quality and cleaner air for Europe	USB
42	DIRECTIVE 2004/107/EC of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (4^{th} daughter directive)	USB
43	DIRECTIVE 2001/81/EC of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (NEC Directive)	USB
44	Regulation (EC) No 166/2006 of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (E-PRTR Regulation)	USB
45	DIRECTIVE 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) (EIA-Directive)	USB
46	Commission Implementing Decision 2012/134/EU for the manufacture of glass	USB
47	Commission Implementing Decision 2012/135/EU for iron and steel production	USB
48	Commission Implementing Decision 2013/84/EU for the tanning of hides and skins	USB
49	Commission Implementing Decision 2013/163/EU for the production of cement, lime and magnesium oxide	USB
	Related EU Documents: Penalties	

50	COM Study (October 2011): Provisions on penalties related to legislation on industrial installations, Executive Summary	Hardcopy
51	COM Study (October 2011): Overview of provisions on penalties related to legislation on industrial installations in the Member States	USB
52	COM Study (October 2011): Provisions on penalties related to legislation on industrial installations, Document on Good Practices, October	USB
	Related Documents: Public participation	
53	The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention)	Hardcopy
54	Directive 2003/35/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC	Hardcopy
55	DIRECTIVE 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC	USB
	Other Documents	
56	The Kolontár Report: CAUSES AND LESSONS FROM THE RED MUD DISASTER, Budapest, March 2011	USB
	Selected CJEU Case Law	
57	Joined cases C-165/09 to C-167/09, *Stichting Natuur en Milieu and Others v College van Gedeputeerde Staten van Groningen and College van Gedeputeerde Staten van Zuid-Holland*	USB
58	Case C-473/07, *Association nationale pour la protection des eaux and rivières and OABA* (French poultry case)	USB
59	Case C-237/07, *Dieter Janecek v Freistaat Bayern*	USB

Annex 3: Examples of presentations and case studies

Christoph Sobotta:

- The relevance of EU Law and the procedure of the CJEU for the domestic judge
- Case study – Reference for a preliminary ruling in a case related to industrial emissions: Presentation
- Case study – Reference for a preliminary ruling in a case related to industrial emissions: Case notes
- Case study – Relevance of EU law and procedures at the CJEU for a domestic judge: Solution – Judgment in Case C-416/10 (Križan)

Gabriella Gerzsenyi:

- The new Industrial Emissions Directive (IED)
- Best available techniques (BAT) conclusions

Peter Vajda:

- Enforcement of EU and national law on industrial emissions with focus on inspections and penalties
- Role-play – Simulation of an administrative procedure resulting in penalties being imposed:
  - Case Study A
  - Case Study B
  - Case Study C
- Large combustion plants and their specific situation

Andrej Kmecl:

- Cross-border co-operation of judges in environmental matters
- Case Study – Questions regarding permitting procedures of an installation falling under the scope of the new Industrial Emissions Directive (IED): Presentation
- Case Study – Questions regarding permitting procedures of an installation falling under the scope of the new Industrial Emissions Directive (IED): Case notes and solution

Jerzy Jendrośka:

- The new Industrial Emissions Directive and public participation

Monika Krivickaite:

- Access to e-EU law

The relevance of EU Law and the procedures of the CJEU for the domestic judge

Workshop on EU Law on Industrial Emissions

Budapest, 3 June 2013

Dr. Christoph Sobotta,
Chambers of Advocate General Juliane Kokott
Court of Justice of the European Union

ERA
Academy of European Law

European Commission

On the Advocate General

- Member of the Court
- Advises the Court by preparing Opinions
  - Opinion is not a Judgment
  - Only the Judgment has the authority of the Court
  - Opinions can illuminate the background

Structure of the Presentation

- Why is EU law important for the domestic judge?
  - Precedence
  - Direct Effect
  - ...
- How is the domestic judge linked to the CJEU?
  - Preliminary reference procedure
  - Infringement procedure (?)
- Perhaps a practical example

The relevance of EU law

- Precedence (also: primacy, supremacy)
- Direct effect (including Directives)
- Indirect effect (interpretation in conformity)
- Flanked by the principles of effectivity & equivalence / effective judicial protection
- Effet utile / practical effect

Precedence of EU law

- Precedence
  - Provisions of EU law render **inapplicable** any conflicting provision of national law
  - This applies to all types of national law, including constitutional law
  - Precedence aims to ensure the uniform application of EU law

Direct Effect of EU law

- EU law is intended to give rights to citizens
  - Common Market
  - Supranational Powers
  - Union of States and peoples
  - Supervisory Function of Individuals
- Provisions must be sufficiently clear and unconditional

Direct Effect of Directives

- EU environmental law mostly comes in the form of Directives.
- Art. 288 TFEU: Directives are binding with regard to the result but leave MS the choice of form and methods.
- Apparently there's a condition! No direct effect?

The Van Duyn case

- Directives are binding with regard to the result
- Directives can be the object of a preliminary reference
- Failure to transpose in time cannot justify failure to apply **after the time limit expired**.
- But: No obligations of private parties can result from the direct application of Directives

Indirect Effect

- Domestic law must be interpreted, so far as possible, in order to achieve the result sought by the relevant EU law.
- Courts must take the whole body of domestic law into consideration and apply all interpretative methods recognised by in their legal system.
- But this obligation cannot serve as the basis for an interpretation of national law *contra legem*.

Effective judicial protection

- If EU law creates rights MS must provide access to courts
- Without EU harmonization MS determine procedural conditions
- But they must respect the principles of **equivalence** and **effectiveness**

Effet utile / practical effect

- Principle of interpretation
  - All provisions of EU law aim to have a practical effect
  - Exceptions must therefore be interpreted restrictively
- EU Environmental law
  - Aims at a high level of protection (Art. 191 TFEU)
  - Is not a (narrow) exception to general permit procedures, on the contrary

And now to the Court

- Brussels: most important seat of the political EU institutions (Council, Commission, important parts of the Parliament)
- Strasbourg: most of the plenary sessions of Parliament + Council of Europe and the European Court of Human Rights (ECtHR)
- Luxembourg: Court of Justice of the European Union (CJEU)

Access to the CJEU in environmental matters

- Preliminary reference procedure (Art. 267, MS courts)
- Infringement procedure (Art. 258 – 260, mostly EU Commission)
- Direct actions against EU bodies (Art. 263, individuals, institutions or MS, rare, but increasing)

The Preliminary Reference Procedure

- Dual Objective:
  - Uniform interpretation of EU law
  - Effective judicial protection
- Nature: Co-operation between courts

Subject matter of the reference

- Doubts
  - with regard to the interpretation of EU law or
  - with regard to the validity of secondary EU law
- Must be relevant for the outcome of a pending procedure before the referring court.

Power to make a Reference

- Lower courts may use the procedure (discretion), courts of last instance are obliged make a reference
- No reference by other bodies: eg. competition authorities, equal treatment commissions, towns, private parties
- Parties to the procedure can suggest, but not request or prevent a reference
- Higher courts cannot restrict the right to make a reference.

Obligation to make a Reference

- A national court against whose decisions there is no judicial remedy
- Question is relevant to the outcome of a pending case
- Exceptions
  - Acte claire (correct application is obvious)
  - Existing cases of the CJEU

Sanctions for a failure to refer (EU)

- No direct EU remedy for the parties of the domestic procedure, but
  - Infringement procedure (C-129/00, COM/Italy, theoretical)
  - Damages (C-224/01, Köbler, manifest violation)
  - Obligation to review a final administrative decision (C-453/00, Kühne & Heitz, stringend conditions)

Sanctions for a failure to refer (ECHR & MS)

- There are remedies against an *arbitrary* refusal to make a reference,
  - under Art. 6 of the ECHR - the right to a fair trial (Ullens de Schooten, 3989/07 and 38353/07) or
  - Member State constitutional law (Germany, Austria, Spain).

Formal requirements

- An identifiable question on EU law
- Factual and legal background
- Optional: necessity of the reference and proposed response

Infringement Procedures

Legal Basis

- Art. 17 (1) 2nd sentence TEU
- Art. 258 to 260 TFEU

Art. 17 TEU

[The Commission] … shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them.

Art. 258 TFEU – Object I

Failure by a MS to comply with EU law:

- Treaty
- Regulation
- Directive
- International law obligations of the EU

Not: Infringements by private parties, but insufficient enforcement against them

Art. 258 TFEU – Object II

Failure by a MS to comply with EU law:

- Non-Transposition of Directives
- Non-Conformity of Transposition
- Bad Application of EU provisions

Art. 258 TFEU – Procedural Steps

- “Letter of formal notice” – opportunity of MS to submit observations
- “Reasoned Opinion” + final time-limit
- Application to the Court

Art. 259 TFEU

- MS can also initiate infringement proceedings against other MS
- Case must be brought before the Commission
- COM shall hear both MS and issue a reasoned opinion
- Then a court case is possible

Art. 260 TFEU

- MS must comply with a judgment and transpose it
- COM can bring a second case to the CJEU if the MS has not complied
- CJEU can impose
  - a lump sum for non-compliance in the past and
  - a periodic penalty payment until compliance is achieved

An example in the field of the environment

Case 201/02, Wells of 7 January 2004

- reopen an old quarry
- plaintiff lives directly between two parts of the quarry
- site is environmentally sensitive
- no environmental impact assessment

Wells – direct effect

- Project listed in annex II of the EIA Directive
- Likely to have significant impact
- Neither old project nor „pipeline-project“

Wells – effective judicial protection

- Member State must nullify the unlawful **consequences** of a breach of Community law.
- Every organ of the Member State, including courts, are responsible to:
  - assess the necessity of EIA
  - if need be, order EIA
  - may require revocation or suspension of a consent already granted

Thank you for your attention!

ERA
Academy of European Law

European Commission

Case Study based on Case C-416/10 *Krizan*

Workshop on EU Law on Industrial Emissions

Budapest, 3 June 2013

Dr. Christoph Sobotta,
Chambers of Advocate General Juliane Kokott
Court of Justice of the European Union

ERA
Academy of European Law

European Commission

The Facts

- Landfill in a former clay pit in a town
- 7/5/2007: urban planning decision on the location of the landfill
- 25/9/2007:application for an integrated permit
- 17/10/2007: 30 days public consultation

The Dispute

- The planning decision is not part of the available information
- In response to a complaint the planning decision is considered a commercial secret
- Subsequently the integrated permit is issued by the first administrative instance
- On appeal the second administrative instance makes the planning decision available, again consults the public, but confirms the permit

Court proceedings

- The Regional Court dismisses the legal action against the permit
- On appeal, the Supreme Court annuls the permit because the planning decision should have been available in the administrative first instance
- The Constitutional Court finds a breach of the rights to effective legal protection and to property because the Supreme Court did not examine whether a possible illegality had been healed during the second administrative instance. It annuls the judgment of the Supreme Court.

Reference to the CJEU?

- The Supreme Court looks for a resolution from Luxembourg. Two issues are being discussed:
  - Is the decision of the Constitutional Court an obstacle to a reference?
  - Is the validity of the integrated permit affected by the withholding of the urban planning decision during the first administrative instance?

Additional Question

- An EIA was conducted in 1999
- In 2006 its validity was extended without further studies or public consultations
- Slovak law provides that complaints against the EIA must be introduced in a separate judicial procedure
- The Supreme Court raised the EIA ex officio an found the extension invalid
- The Constitional Court found the Supreme Court incompetent for the issue
- Questions to the CJEU?

Results

See Case C-416/10 *Krizan*

The Opinion currently is available in all languages but English.

To be presented later.

On the Constitutional Court

- All Courts have the power to bring a reference.
- A request by a party is not necessary.
- Binding decisions of a higher court do not limit the freedom to bring a reference if the outcome could be relevant to the case.
- A Constitutional Court, limited to questions of constitutional law, is not an additional judicial instance. >> The Supreme Court probably is obliged to make a reference.

On the availability of the planning decision

- The planning decision is relevant to the integrated permit procedure and therefore should be available
- Commercial secrets are protected by reference the Directive on Environmental Information
- However, there is no indication that the complete decision requires protection
- Therefore, it should have been available

Was the infringement healed?

- No EU rules on procedural healing of mistakes
- >> MS responsibility, but under the principles of **equivalence** and **effectiveness**
- Effectiveness does not completely preclude later regularisation, but circumvention of rules must be prevented

On the additional Question

- Is the Directives on environmental impact assessment applicable? No, the original assessment predates the accession, therefore the project was already in the pipeline.
- [Does the Directive allow the extension of an assessment? In principle, the assessment must be up-to-date.]
- [Does the Directive allow a distinct procedure to deal with the assessment? MS responsibility, but relevant errors must prevent the project.]

Thank you for your attention!

ERA
Academy of European Law

European Commission

Case Study based on Case C-416/10 Krizan
Submitted by Christoph Sobotta,
Cabinet of Advocate General Juliane Kokott
Court of Justice of the European Union

In a former clay pit in Pezinok, a town in Slovakia, a company, *Ecological Services ltd.*, intends to build and operate a landfill receiving more than 10 tonnes of waste per day and with a total capacity exceeding 25 000 tonnes of waste. The project has been in preparation for more than 15 years.

By decision of 7 May 2007 the regional urban planning service authorised, at the request of *Ecological Services*, the establishment of a landfill site on the site of the former clay pit.

On 25 September 2007 *Ecological Services* lodged an application for an integrated permit. The *Environment inspection of Bratislava* initiated an integrated procedure on the basis of Law No 245/2003, which is the measure transposing Directive 96/61. On 17 October 2007, together with the public services for environmental protection, it published that application and set out a period of 30 days for the submission of observations by the public and the State services concerned.

A group of local citizens complained that the application for an integrated permit was incomplete. It did not contain the urban planning decision of 7 May 2007 on the location of the landfill site. The *Environment inspection* stayed the procedure on and requested that decision from the applicant.

Ecological Services forwarded that decision but indicated that it considered it to be commercially confidential. On the basis of that indication, the *Environment inspection* did not make the document at issue available to the public.

On 22 January 2008, the *Environment inspection* issued *Ecological Services* with an integrated permit for the construction of the installation ‘Pezinok – landfill site’ and for its operation.

The mentioned group of local citizens appealed this permit before the *Slovak Environment Inspection*, which is the environmental protection body at second instance. That body published the urban planning decision on the location of the landfill site from 14 March to 14 April 2008 and allowed the submission of observations during this period.

In the context of the administrative procedure at second instance, the local citizens relied, inter alia, on the error in law which, they submit, consisted in the integrated procedure being initiated without the urban planning decision on the location of the landfill site being available, then, after that decision had been submitted, without publication thereof, on the alleged ground that it constituted confidential commercial information.

The *Slovak Environment Inspection* dismissed the appeal as unfounded and confirmed the decision of the first instance authority.

The local citizens brought an action against the decision of the *Slovak Environment Inspection* before the Regional Court of Bratislava, an administrative court of first instance. That court dismissed the action, but the citizens lodged an appeal against that judgment before the Supreme Court of the Slovak Republic.

The Supreme Court annulled the decision of the *Slovak Environment Inspection* and the decision of the *Environment Inspection*, in essence finding that the competent authorities had failed to observe the rules governing the participation of the public concerned in the integrated permit procedure.

Against this judgment *Ecological Services* lodged a constitutional appeal before the Constitutional Court of the Slovak Republic. The Constitutional Court held that the Supreme Court had infringed *Ecological Services's* fundamental right to legal protection and its fundamental right to property. It found, inter alia, that the Supreme Court had not taken account of the possibility that a possible infringement of the rules on public participation had been healed in the administrative appeal procedure.

Therefore, the Constitutional Court set aside the judgment, referring the case back to the Supreme Court.

The majority in the Supreme Court remains convinced that the decision is illegal and considers a reference to Court of Justice of the European Union on the legality of the integrated permit. However, in the deliberations doubts were raised whether the decision of the Constitutional Court, which is binding on the Supreme Court, precludes a reference. Moreover, there are concerns because none of the parties have requested the reference.

Please prepare questions on both issues and propose responses.

Additional Question

If there is still time please look into an additional problem raised by the case:

On 16 December 1998, *Ecological Services* presented an assessment report for the proposed location of the landfill site. The *Ministry of the Environment* carried out an environmental impact assessment in 1999. It delivered a final opinion on 26 July 1999.

On 27 March 2006, at the request of *Ecological Services*, the *Ministry of the Environment* extended the validity of its final opinion of 26 July 1999 until 1 February 2008. This extension was granted without any public participation or additional studies.

Slovak law provides that complaints against the environmental impact assessment must be lodged in a separate court procedure and that was why the appellants had not addressed the impact assessment in the procedure concerning the integrated permit. Nevertheless, the Supreme Court raised the issue *ex officio*. In its first judgment it decided that in extending the validity of the environmental impact assessment the corresponding EU Directive had been infringed.

However, the Constitutional Court found that the Supreme Court had exceeded its powers by examining the lawfulness of the procedure and of the environmental impact assessment decision.

Please propose possible questions and responses on this matter.

The legal framework

Art. 267 TFEU

Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26) as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1).

Directive 2003/4 of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313 (OJ 2003 L 41, p. 26)

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17).

Solution

Case C-416/10 *Krizan*

СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA
SOUDNÍ DVŮR EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN UNION
EUROOPA LIIDU KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
COURT OF JUSTICE OF THE EUROPEAN UNION
COUR DE JUSTICE DE L'UNION EUROPÉENNE
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS TIESA

CVRIA
LUXEMBOURG

EUROPOS SĄJUNGOS TEISINGUMO TEISMAS
AZ EURÓPAI UNIÓ BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIŢIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Grand Chamber)

15 January 2013 *

(Article 267 TFEU – Annulment of a judicial decision – Referral back to the court concerned – Obligation to comply with the annulment decision – Reference for a preliminary ruling – Whether possible – Environment – Aarhus Convention – Directive 85/337/EEC – Directive 96/61/EC – Public participation in the decision-making process – Construction of a landfill site – Application for a permit – Trade secrets – Non-communication of a document to the public – Effect on the validity of the decision authorising the landfill site – Rectification – Assessment of the environmental impact of the project – Final opinion prior to accession of the Member State to the European Union – Application in time of Directive 85/337 – Effective legal remedy – Interim measures – Suspension of implementation – Annulment of the contested decision – Right to property – Interference)

In Case C-416/10,

REQUEST for a preliminary ruling under Article 267 TFEU from the Najvyšší súd Slovenskej republiky (Slovakia), made by decision of 17 August 2010, received at the Court on 23 August 2010, in the proceedings

Jozef Križan,

Katarína Aksamitová,

Gabriela Kokošková,

Jozef Kokoška,

Martina Strezenická,

Jozef Strezenický,

Peter Šidlo,

* Language of the case: Slovak.

Lenka Šidlová,

Drahoslava Šidlová,

Milan Šimovič,

Elena Šimovičová,

Stanislav Aksamit,

Tomáš Pitoňák,

Petra Pitoňáková,

Mária Križanová,

Vladimír Mizerák,

Ľubomír Pevný,

Darina Brunovská,

Mária Fišerová,

Lenka Fišerová,

Peter Zvolenský,

Katarína Zvolenská,

Kamila Mizeráková,

Anna Konfráterová,

Milan Konfráter,

Michaela Konfráterová,

Tomáš Pavlovič,

Jozef Krivošík,

Ema Krivošíková,

Eva Pavlovičová,

Jaroslav Pavlovič,

Pavol Šipoš,

Martina Šipošová,

Jozefína Šipošová,

Zuzana Šipošová,

Ivan Čaputa,

Zuzana Čaputová,

Štefan Strapák,

Katarína Strapáková,

František Slezák,

Agnesa Slezáková,

Vincent Zimka,

Elena Zimková,

Marián Šipoš,

Mesto Pezinok

v

Slovenská inšpekcia životného prostredia,

intervener:

Ekologická skládka as,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, M. Ilešič, L. Bay Larsen (Rapporteur), J. Malenovský, Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, C. Toader, J.-J. Kasel and M. Safjan, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 January 2012,

after considering the observations submitted on behalf of:

– Jozef Križan, Katarína Aksamitová, Gabriela Kokošková, Jozef Kokoška, Martina Strezenická, Jozef Strezenický, Peter Šidlo, Lenka Šidlová, Drahoslava Šidlová, Milano Šimovič, Elena Šimovičová, Stanislav Aksamit, Tomáš Pitoňák, Petra Pitoňáková, Mária Križanová, Vladimír Mizerák, Ľubomír Pevný, Darina Brunovská, Mária Fišerová, Lenka Fišerová, Peter Zvolenský, Katarína Zvolenská, Kamila Mizeráková, Anna Konfráterová, Milano Konfráter, Michaela Konfráterová, Tomáš Pavlovič, Jozef Krivošík, Ema Krivošíková, Eva Pavlovičová, Jaroslav Pavlovič, Pavol Šipoš, Martina Šipošová, Jozefína Šipošová, Zuzana Šipošová, Ivan Čaputa, Zuzana Čaputová, Štefan Strapák, Katarína Strapáková, František Slezák, Agnesa Slezáková, Vincent Zimka, Elena Zimková, Marián Šipoš, by T. Kamenec and Z. Čaputová, advokáti,

– Mesto Pezinok, by J. Ondruš and K. Siváková, advokáti,

– Slovenská inšpekcia životného prostredia, by L. Fogaš, advokát,

– Ekologická skládka as, by P. Kováč, advokát,

– the Slovak Government, by B. Ricziová, acting as Agent,

– the Czech Government, by M. Smolek and. D. Hadroušek, acting as Agents,

– the French Government, by S. Menez, acting as Agent,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the European Commission, by P. Oliver and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) (‘the Aarhus Convention’), of Articles 191(1) and (2) TFEU and 267 TFEU, of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) (‘Directive 85/337’), and of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as

amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1) (‘Directive 96/61’).

2 This request has been made in proceedings between, on the one hand, Mr Križan and 43 other appellants, natural persons, residents of the town of Pezinok, as well as Mesto Pezinok (town of Pezinok), and, on the other, the Slovenská inšpekcia životného prostredia (Slovak Environment Inspection; ‘the inšpekcia’) concerning the lawfulness of decisions of the administrative authority authorising the construction and operation by Ekologická skládka as (‘Ekologická skládka’), the intervener in the main proceedings, of a landfill site for waste.

Legal context

International law

3 Article 6 of the Aarhus Convention, entitled ‘Public participation in decisions on specific activities’, provides in paragraphs 1, 2, 4 and 6:

‘1. Each party:

(a) shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;

...

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

...

(d) the envisaged procedure, including, as and when this information can be provided:

...

(iv) an indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

...

4. Each party shall provide for early public participation, when all options are open and effective public participation can take place.

...

6. Each party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance [with, in particular, Article 4(4)].

...'

4 Article 9 of the Aarhus Convention, entitled 'Access to justice', provides in paragraphs 2 and 4:

'2. Each party shall, within the framework of its national legislation, ensure that members of the public concerned:

...

(b) ... have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

...

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. …'

5 Annex I, section 5, to the Aarhus Convention indicates, under the activities referred to in Article 6(1)(a) thereof:

'Waste management

…

– landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.'

European Union law

Directive 85/337

6 Article 1(2) of Directive 85/337 defines the concept of 'development consent' as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project.'

7 Article 2 of Directive 85/337 is drafted in the following terms:

‘1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. Those projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

...’

Directive 96/61

8 Recital 23 in the preamble to Directive 96/61 states:

‘... in order to inform the public of the operation of installations and their potential effect on the environment, and in order to ensure the transparency of the licensing process throughout the Community, the public must have access, before any decision is taken, to information relating to applications for permits for new installations …’

9 Article 1 of that directive, entitled ‘Purpose and scope’, provides:

‘The purpose of this Directive is to achieve integrated prevention and control of pollution arising from the activities listed in Annex I. It lays down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land from the abovementioned activities, including measures concerning waste, in order to achieve a high level of protection of the environment taken as a whole, without prejudice to Directive [85/337] and other relevant Community provisions.’

10 Article 15 of Directive 96/61, entitled ‘Access to information and public participation in the permit procedure’, provides:

‘1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for:

– issuing a permit for new installations,

...

The procedure set out in Annex V shall apply for the purposes of such participation.

...

4. [In particular, paragraph 1] shall apply subject to the restrictions laid down in Article 3(2) and (3) of [Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56)].

...'

11 Article 15a of Directive 96/61, entitled 'Access to justice', reads as follows:

'Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

...

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

...

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

...'

12 Annex I to Directive 96/61, entitled 'Categories of industrial activities referred to in Article 1', refers, in paragraph 5.4, to '[l]andfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste.'

13 Annex V to Directive 96/61, entitled 'Public participation in decision-making', provides, inter alia:

'1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:

...

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

...

(f) an indication of the times and places where, or means by which, the relevant information will be made available;

...’

Directive 2003/4/EC

14 Recital 16 in the preamble to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313 (OJ 2003 L 41, p. 26) is drafted in the following terms:

‘The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. The reasons for a refusal should be provided to the applicant within the time-limit laid down in this Directive.’

15 Article 4(2) and (4) of that directive provides, inter alia:

‘2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

...

(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;

...

The grounds for refusal mentioned [in, inter alia, paragraph 2] shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. ...

...

4. Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs 1(d) and (e) or 2 from the rest of the information requested.’

Directive 2003/35

16 Recital 5 in the preamble to Directive 2003/35 provides that European Union law should be properly aligned with the Aarhus Convention with a view to its ratification.

Slovak law

Procedural rules

17 Article 135(1) of the Code of Civil Procedure provides:

'... The court is also bound by the decisions of the Ústavný súd Slovenskej republiky [Constitutional Court of the Slovak Republic] or the European Court of Human Rights which affect fundamental rights and freedoms.'

18 Paragraph 56(6) of Law No 38/1993 Z.z. on the organisation, the rules of procedure and the status of judges of the Ustavný súd Slovenskej republiky, in the version applicable to the facts in the main proceedings, provides:

'If the Ústavný súd Slovenskej republiky annuls a decision, a measure or other valid action and refers the case, the body which, in that case, adopted the decision, took the measure or the action, is required to re-examine the case and to rule afresh. In that procedure or step, it is bound by the právny názor [judicial position] of the Ústavný súd Slovenskej republiky.'

The provisions on environmental impact assessments, urban planning rules and integrated permits

– Law No 24/2006 Z.z.

19 Paragraph 1(1) of Law No 24/2006 Z.z. on environmental impact assessments and amending several laws, in the version applicable to the facts in the main proceedings, states:

'The present law governs:

(a) the evaluation process, by professionals and by the public, of the alleged impact on the environment

...

2. of planned activities before the adoption of the decision on their location or before their authorisation under the specific legislation.

...'

20 Paragraph 37 of that law provides:

‘...

6. The period of validity of the final opinion concerning an activity is three years from its issue. The final opinion shall maintain its validity if, during that period, a location procedure or a procedure for a permit for the activity is initiated under the specific legislation.

7. The validity of the final opinion concerning an activity may be extended by a renewable period of two years at the request of the applicant if he adduces written evidence that the planned activity and the conditions of the land have not undergone substantial changes, that no new circumstance connected to the material content of the assessment report of the activity has arisen and that new technologies used to proceed with the planned activity have not been developed. The decision to extend the validity of the final opinion concerning the activity reverts to the competent body.’

21 Paragraph 65(5) of that law provides:

‘If the final opinion was issued before 1 February 2006 and if the procedure for the authorisation of the activity subject to the assessment was not initiated under the specific legislation, an extension to its validity must, in accordance with Paragraph 37(7), be requested from the Ministry.’

Law No 50/1976 Zb.

22 Paragraph 32 of Law No 50/1976 Zb. on urban planning, in its version applicable to the facts in the main proceedings, provides:

‘Construction of a building, changes to land use and the protection of major interests in the land are possible only on the basis of an urban planning decision taking the form of a

(a) location decision;

...’

– Law No 245/2003 Z.z.

23 Paragraph 8(3) and (4) of Law No 245/2003 Z.z. on integrated pollution prevention and control and amending a number of laws, as amended by Law No 532/2005 (‘Law No 245/2003’), provides:

‘(3) Where there is an integrated operating permit, which at the same time requires a permit for a new building or for alterations to an existing building, the procedure shall also include an urban planning procedure, a procedure for changes prior to completion of the building and a procedure for the authorisation of improvements.

(4) The urban planning procedure, the assessment of the environmental impact of the installation and the determination of the conditions for the prevention of serious industrial accidents shall not form part of the integrated permit.'

24 Paragraph 11(2) of that law specifies:

'The application [for the integrated permit] must be accompanied by:

...

(c) the final opinion following from the environment impact assessment procedure, if required due to the operation,

…

(g) the urban planning decision, if it is a new operation or the expansion of an existing operation …'

25 Paragraph 12 of that law, entitled 'Commencement of the procedure', states:

'...

(2) After having confirmed that the application is complete and specified the group of parties involved in the procedure and the bodies concerned, the administration

...

(c) ... shall publish the application on its internet page, with the exception of the annexes which are not available in an electronic form, and, for a minimum period of 15 days, shall publish in its official list the essential information on the application lodged, the operator and the operation,

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

The administrative procedure

26 On 26 June 1997, Mesto Pezinok adopted General Regulation No 2/1997 on urban planning, which provided, inter alia, for the location of a landfill site in a trench used for the extraction of earth for use in brick-making, called 'Nová jama' (new trench).

27 On the basis of an assessment report for a proposed location of a landfill site presented by Pezinské tehelne as on 16 December 1998, the Ministry of the

Environment carried out an environmental impact assessment in 1999. It delivered a final opinion on 26 July 1999.

28 On 7 August 2002, Ekologická skládka presented to the competent service of Mesto Pezinok an application seeking to be granted an urban planning decision on the location of a landfill site on the Nová jama site.

29 On 27 March 2006, at the request of Pezinské tehelne as, the Ministry of the Environment extended the validity of its final opinion of 26 July 1999 until 1 February 2008.

30 By decision of 30 November 2006, in the version resulting from a decision of the Krajský stavebný úrad v Bratislave (regional urban planning service of Bratislava) of 7 May 2007, Mesto Pezinok authorised, at the request of Ekologická skládka, the establishment of a landfill site on the Nová jama site.

31 Following an application for an integrated permit lodged on 25 September 2007 by Ekologická skládka, the Slovenská inšpekcia životného prostredia, Inšpektorát životného prostredia Bratislava (Slovak environment inspection, environment inspection authority of Bratislava; 'the inšpektorát') initiated an integrated procedure on the basis of Law No 245/2003, which was the measure transposing Directive 96/61. On 17 October 2007, together with the public services for environmental protection, it published that application and set out a period of 30 days for the submission of observations by the public and the State services concerned.

32 Since the appellants in the main proceedings had invoked the incomplete nature of the application for an integrated permit submitted by Ekologická skládka, in so far as it did not contain, as an annex provided for under Paragraph 11(2)(g) of Law No 245/2003, the urban planning decision on the location of the landfill site, the inšpektorát stayed the integrated procedure on 26 November 2007 and requested notification of that decision.

33 On 27 December 2007, Ekologická skládka forwarded that decision and indicated that it considered it to be commercially confidential. On the basis of that indication, the inšpektorát did not make the document at issue available to the appellants in the main proceedings.

34 On 22 January 2008, the inšpektorát issued Ekologická skládka with an integrated permit for the construction of the installation 'Pezinok – landfill site' and for its operation.

35 The appellants in the main proceedings lodged an appeal against that decision before the inšpekcia, which is the environmental protection body at second instance. That body decided to publish the urban planning decision on the location of the landfill site in the official list from 14 March to 14 April 2008.

36 In the context of the administrative procedure at second instance, the appellants in the main proceedings relied, inter alia, on the error in law which, they submit, consisted in the integrated procedure being initiated without the urban planning decision on the location of the landfill site being available, then, after that decision had been submitted, without publication thereof, on the alleged ground that it constituted confidential commercial information.

37 By decision of 18 August 2008, the inšpekcia dismissed the appeal as unfounded.

The judicial proceedings

38 The appellants in the main proceedings brought an action against the inšpekcia's decision of 18 August 2008 before the Krajský súd Bratislava (Regional Court of Bratislava), an administrative court of first instance. By judgment of 4 December 2008, that court dismissed the action.

39 The appellants in the main proceedings lodged an appeal against that judgment before the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic).

40 By order of 6 April 2009, that court suspended the operation of the integrated permit.

41 By judgment of 28 May 2009, the same court amended the judgment of the Krajský súd Bratislava and annulled the decision of the inšpekcia of 18 August 2008 and the decision of the inšpektorát dated 22 January 2008, in essence finding that the competent authorities had failed to observe the rules governing the participation of the public concerned in the integrated procedure and had not sufficiently assessed the environmental impact of the construction of the landfill site.

42 Ekologická skládka lodged a constitutional appeal before the Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic) on 25 June 2009 against the order of the Najvyšší súd Slovenskej republiky of 6 April 2009 and, on 3 September 2009, a constitutional appeal against the judgment of that latter court of 28 May 2009.

43 By judgment of 27 May 2010, the Ustavný súd Slovenskej republiky held that the Najvyšší súd Slovenskej republiky had infringed Ekologická skládka's fundamental right to legal protection, recognised in Article 46(1) of the Constitution, its fundamental right to property, recognised in Article 20(1) of the Constitution, and its right to peaceful enjoyment of its property, recognised in Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

44 It found, inter alia, that the Najvyšší súd Slovenskej republiky had not taken account of all the applicable principles governing the administrative procedure and that it had exceeded its powers by examining the lawfulness of the procedure and of the environmental impact assessment decision, even though the appellants had not disputed them and it lacked jurisdiction to rule on them.

45 By its judgment, the Ústavný súd Slovenskej republiky consequently annulled the contested order and set aside the judgment, referring the case back to the Najvyšší súd Slovenskej republiky so that it could give a fresh ruling.

46 The Najvyšší súd Slovenskej republiky observes that several participants in the proceedings pending before it claim that it is bound by the judgment of the Ústavný súd Slovenskej republiky of 27 May 2010. None the less, it notes that it still has doubts as to the compatibility of the contested decisions with European Union law.

47 In those circumstances, the Najvyšší súd Slovenskej republiky decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does [European Union] law (specifically Article 267 TFEU) require or enable the supreme court of a Member State, of its own motion, to refer a question to the [Court of Justice] for a preliminary ruling even at a stage of proceedings where the constitutional court has annulled a judgment of the supreme court based in particular on the application of the [European Union legal] framework on environmental protection and imposed the obligation to abide by the constitutional court’s legal opinions based on breaches of the procedural and substantive constitutional rights of a person involved in judicial proceedings, irrespective of the [European Union law] dimension of the case concerned, that is, where in those proceedings the constitutional court, as the court of last instance, has not concluded that there is a need to refer a question to the [Court of Justice] for a preliminary ruling and has provisionally excluded the application of the right to an acceptable environment and the protection thereof in the case concerned?

2. Is it possible to fulfil the basic objective of integrated prevention as defined, in particular, in recitals 8, 9 and 23 in the preamble to and Articles 1 and 15 of Directive [96/61], and, in general, in the [European Union legal] framework on the environment, that is, pollution prevention and control involving the public in order to achieve a high level of environmental protection as a whole, by means of a procedure where, on commencement of an integrated prevention procedure, the public concerned is not guaranteed access to all relevant documents (Article 6 in conjunction with Article 15 of Directive [96/61]), especially the decision on the location of a structure (landfill site), and where, subsequently, at first instance, the missing document is submitted by the applicant on condition that it is not disclosed

to other parties to the proceedings in view of the fact that it constitutes trade secrets: can it reasonably be assumed that the location decision (in particular its statement of reasons) will significantly affect the submission of suggestions, observations or the other comments?

3. Are the objectives of [Directive 85/337] met, especially in terms of the [European Union legal] framework on the environment, specifically the condition referred to in Article 2 that, before consent is given, certain projects will be assessed in the light of their environmental impact, if the original position of the Ministerstvo životného prostredia (Ministry of the Environment) issued in 1999 and terminating a past environmental impact assessment (EIA) procedure is prolonged several years later by a simple decision without a repeat EIA procedure; in other words, can it be said that a decision under [Directive 85/337], once issued, is valid indefinitely?

4. Does the requirement arising generally under Directive [96/61] (in particular the preamble and Articles 1 and 15a) for Member States to engage in the prevention and control of pollution by providing the public with fair, equitable and timely administrative or judicial proceedings in conjunction with Article 10a of Directive [85/337] and Articles 6 and 9(2) and (4) of the Aarhus Convention apply to the possibility for the public to seek the imposition of an administrative or judicial measure which is preliminary in nature in accordance with national law (for example, an order for the judicial suspension of enforcement of an integrated permit) and allows for the temporary suspension, until a final decision in the case, of the construction of an installation for which a permit has been requested?

5. Is it possible, by means of a judicial decision meeting the requirements of Directive [96/61] or Directive [85/337] or Article 9(2) and (4) of the Aarhus Convention, in the application of the public right contained therein to fair judicial protection within the meaning of Article 191(1) and (2) [TFEU], concerning European Union policy on the environment, to interfere unlawfully with an operator's right of property in an installation as guaranteed, for example, in Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, for example by revoking an applicant's valid integrated permit for a new installation in judicial proceedings?'

Consideration of the questions referred

Admissibility

48 The inšpekcia, Ekologická skládka and the Slovak Government challenge, on a variety of grounds, the admissibility of the request for a preliminary ruling or of some of the questions referred.

49 In the first place, in the view of the inšpekcia and Ekologická skládka, all of the questions referred are inadmissible because they concern situations which are entirely governed by internal rules, in particular by the acts transposing Directives 85/337 and 96/61. Ekologická skládka infers from this that those directives have no direct effect, while the inšpekcia considers that they are sufficiently clear to render the reference for a preliminary ruling unnecessary. The inšpekcia also argues that the questions referred ought to have been raised during the first stage of the proceedings brought before the Najvyšší súd Slovenskej republiky. Likewise, Ekologická skládka takes the view that those questions are superfluous in so far as the Najvyšší súd Slovenskej republiky is now bound by the position in law taken by the Ústavný súd Slovenskej republiky and that none of the parties in the main proceedings requested that the Court of Justice be seised of those questions.

50 In the second place, Ekologická skládka claims that the separation established by national law between the integrated procedure, the urban planning procedure and the environmental impact assessment procedure renders the second and third questions irrelevant to the outcome of the main proceedings. In the view of the inšpekcia, that separation justifies the contention that the third, fourth and fifth questions are inadmissible. That is because it implies that a defect arising from the urban planning decision or the environmental impact assessment has no effect on the lawfulness of the integrated permit.

51 In the third place, Ekologická skládka and the Slovak Government take the view that the fourth question is hypothetical. First, the interim measures ordered by the Najvyšší súd Slovenskej republiky in its order of 6 April 2009 are, they contend, now wholly deprived of effectiveness. Second, that question is irrelevant to the proceedings pending before the referring court since those proceedings concern the validity of the contested administrative decisions and not the delivery of new interim measures.

52 In the fourth and last place, Ekologická skládka claims that the fifth question is also hypothetical as it concerns the decision that the Najvyšší súd Slovenskej republiky will be called upon to make at the conclusion of the main proceedings. Moreover, that question is also inadmissible because it concerns the interpretation of national constitutional law.

53 In that regard, it must be borne in mind that, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle required to give a ruling (Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 24, and Case C-470/11 *Garkalns* [2012] ECR I-0000, paragraph 17).

54 It follows that questions relating to European Union law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 36, and Case C-509/10 *Geistbeck* [2012] ECR I-0000, paragraph 48).

55 However, the argument relating to the completeness of national law does not enable it to be established that the interpretation of the rules of European Union law cited by the referring court clearly bear no relation to the dispute in the main proceedings, particularly as it is not disputed that the applicable national provisions are in part measures transposing European Union acts. Therefore, that argument does not suffice to reverse the presumption of relevance referred to in the previous paragraph.

56 It must be stated that the alleged absence of direct effect of the directives at issue does not alter that analysis because the Court has jurisdiction, under Article 267 TFEU, to give preliminary rulings concerning the interpretation of acts of the institutions of the European Union, irrespective of whether they are directly applicable (Case C-373/95 *Maso and Others* [1997] ECR I-4051, paragraph 28; Case C-254/08 *Futura Immobiliare and Others* [2009] ECR I-6995, paragraph 34; and Case C-370/12 *Pringle* [2012] ECR I-0000, paragraph 89). Moreover, as regards the assumed irrelevance of the request for a preliminary ruling by reason of the clarity of the applicable rules, it must be recalled that Article 267 TFEU always allows a national court, if it considers it desirable, to refer questions of interpretation to the Court (see, to that effect, Joined Cases C-165/09 to C-167/09 *Stichting Natuur en Milieu and Others* [2011] ECR I-0000, paragraph 52 and the case-law cited).

57 The other arguments put forward by the inšpekcia and Ekologická skládka to demonstrate the inadmissibility of the request for a preliminary ruling in its entirety concern the purpose of the first question and will for that reason be addressed by the Court when it examines that question.

58 As regards the factors arising from the separation of the various proceedings under national law, it is important to note that the referring court adopts a view of the consequences which must be drawn from that separation under national law which is very different from that supported by the inšpekcia and Ekologická skládka. However, in the procedure laid down by Article 267 TFEU, the functions of the Court of Justice and those of the referring court are clearly distinct, and it falls exclusively to the latter to interpret national legislation (Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraph 29, and Case C-500/06 *Corporación Dermoestética* [2008] ECR I-5785, paragraph 21). Consequently, those factors are

insufficient to show that the questions raised are manifestly unconnected with the facts or subject-matter of the dispute.

59 With regard to the admissibility of the fourth question, it is apparent from the decision making the reference that the Najvyšší súd Slovenskej republiky adopted new interim measures designed to suspend the effect of the decisions at issue in the main proceedings. Moreover, Ekologická skládka states in its written observations that it considered it useful to bring an action challenging those measures. In those circumstances, it does not appear that the fourth question can be regarded as hypothetical.

60 Finally, so far as the admissibility of the fifth question is concerned, it is not in dispute that the Ústavný súd Slovenskej republiky held that the Najvyšší súd Slovenskej republiky had infringed Ekologická skládka's right to property by its judgment of 28 May 2009, which found that the integrated permit had been granted under circumstances incompatible with European Union law. In so far as the referring court continues to have doubts as to the compatibility with European law of the decisions contested in the case in the main proceedings, the fifth question is not purely hypothetical. Moreover, it is apparent from the wording of that question that it does not concern the interpretation of national constitutional law.

61 The questions submitted by the referring court must accordingly be declared admissible.

The first question

62 By its first question, the referring court asks, in essence, whether Article 267 TFEU must be interpreted as meaning that a national court may, of its own motion, refer a question to the Court of Justice for a preliminary ruling even though it rules following a referral back after the constitutional court of the Member State concerned has annulled its first decision and although a national rule obliges it to resolve the dispute by following the legal opinion of that latter court. It also asks whether Article 267 TFEU must be interpreted as obliging that same national court to refer a case to the Court of Justice although its decisions may form the subject, before a constitutional court, of an action limited to examining whether there has been an infringement of the rights and freedoms guaranteed by the national Constitution or by an international agreement.

63 Firstly, it must be noted that, by its first question, the Najvyšší súd Slovenskej republiky also wishes to know whether European Union law allows it to disapply a national rule which prohibits it from raising a ground alleging infringement of that law which was not relied on by the parties to the main proceedings. However, it is apparent from the decision making the reference that that question concerns only Directive 85/337 and that it is consequently necessary to rule on that matter

only if it appears, in the light of the response given to the third question, that that directive is applicable in the dispute in the main proceedings.

64 As regards the other aspects of the first question referred, it is settled case-law that Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving interpretation of provisions of European Union law, or consideration of their validity, which are necessary for the resolution of the case (Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 44, and Case C-173/09 *Elchinov* [2010] ECR I-8889, paragraph 26).

65 Article 267 TFEU therefore confers on national courts the power and, in certain circumstances, an obligation to make a reference to the Court once the national court forms the view, either of its own motion or at the request of the parties, that the substance of the dispute involves a question which falls within the scope of the first paragraph of that article (Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 20, and Case C-104/10 *Kelly* [2011] ECR I-0000, paragraph 61). That is the reason why the fact that the parties to the main proceedings did not raise a point of European Union law before the referring court does not preclude the latter from bringing the matter before the Court of Justice (Case 126/80 *Salonia* [1981] ECR 1563, paragraph 7, and Case C-251/11 *Huet* [2012] ECR I-0000, paragraph 23).

66 A reference for a preliminary ruling is based on a dialogue between one court and another, the initiation of which depends entirely on the national court's assessment as to whether that reference is appropriate and necessary (Case C-210/06 *Cartesio* [2008] ECR I-9641, paragraph 91, and Case C-137/08 *VB Pénzügyi Lízing* [2010] ECR I-10847, paragraph 29).

67 Moreover, the existence of a national procedural rule cannot call into question the discretion of national courts to make a reference to the Court of Justice for a preliminary ruling where they have doubts, as in the case in the main proceedings, as to the interpretation of European Union law (*Elchinov*, paragraph 25, and Case C-396/09 *Interedil* [2011] ECR I-0000, paragraph 35).

68 A rule of national law, pursuant to which legal rulings of a higher court bind another national court, cannot take away from the latter court the discretion to refer to the Court of Justice questions of interpretation of the points of European Union law concerned by such legal rulings. That court must be free, if it considers that a higher court's legal ruling could lead it to deliver a judgment contrary to European Union law, to refer to the Court of Justice questions which concern it (Case C-378/08 *ERG and Others* [2010] ECR I-1919, paragraph 32; and *Elchinov*, paragraph 27).

69 At this stage, it must be noted that the national court, having exercised the discretion conferred on it by Article 267 TFEU, is bound, for the purposes of the

decision to be given in the main proceedings, by the interpretation of the provisions at issue given by the Court of Justice and must, if necessary, disregard the rulings of the higher court if it considers, in the light of that interpretation, that they are not consistent with European Union law (*Elchinov*, paragraph 30).

70 The principles set out in the previous paragraphs apply in the same way to the referring court with regard to the legal position expressed, in the present case in the main proceedings, by the constitutional court of the Member State concerned in so far as it follows from well-established case-law that rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of European Union law (Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 3, and Case C-409/06 *Winner Wetten* [2010] ECR I-8015, paragraph 61). Moreover, the Court of Justice has already established that those principles apply to relations between a constitutional court and all other national courts (Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraphs 41 to 45).

71 The national rule which obliges the Najvyšší súd Slovenskej republiky to follow the legal position of the Ústavný súd Slovenskej republiky cannot therefore prevent the referring court from submitting a request for a preliminary ruling to the Court of Justice at any point in the proceedings which it judges appropriate, and to set aside, if necessary, the assessments made by the Ústavný súd Slovenskej republiky which might prove to be contrary to European Union law.

72 Finally, as a supreme court, the Najvyšší súd Slovenskej republiky is even required to submit a request for a preliminary ruling to the Court of Justice when it finds that the substance of the dispute concerns a question to be resolved which comes within the scope of the first paragraph of Article 267 TFEU. The possibility of bringing, before the constitutional court of the Member State concerned, an action against the decisions of a national court, limited to an examination of a potential infringement of the rights and freedoms guaranteed by the national constitution or by an international agreement, cannot allow the view to be taken that that national court cannot be classified as a court against whose decisions there is no judicial remedy under national law within the meaning of the third paragraph of Article 267 TFEU.

73 In the light of the foregoing, the answer to the first question is that Article 267 TFEU must be interpreted as meaning that a national court, such as the referring court, is obliged to make, of its own motion, a request for a preliminary ruling to the Court of Justice even though it is ruling on a referral back to it after its first decision was set aside by the constitutional court of the Member State concerned and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court.

The second question

74 By its second question, the referring court asks, in essence, whether Directive 96/61 must be interpreted as requiring that the public should have access, from the beginning of the authorisation procedure for a landfill site, to an urban planning decision on the location of that installation. It is also uncertain whether the refusal to disclose that decision may be justified by reliance on commercial confidentiality which protects the information contained in that decision, or, failing that, rectified by access to that decision offered to the public concerned during the administrative procedure at second instance.

75 First of all, it must be noted that it follows from the decision making the reference that the location at issue in the main proceedings is a landfill site receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes of waste. Therefore, it falls within the scope of Directive 96/61, as this results from Article 1, read in conjunction with point 5.4 of Annex I, thereof.

76 Article 15 of that directive provides for the participation of the public concerned in the procedure for the issuing of permits for new installations and specifies that that participation is to occur under the conditions set out in Annex V to that directive. That annex requires that the public be informed, in particular, of details of the competent authorities from which relevant information can be obtained and an indication of the date and place where that information will be made available to the public.

77 Those rules on public participation must be interpreted in the light of, and having regard to, the provisions of the Aarhus Convention, with which, as follows from recital 5 in the preamble to Directive 2003/35, which amended in part Directive 96/61, European Union law should be 'properly aligned' (Case C-115/09 *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* [2011] ECR I-0000, paragraph 41). However, Article 6(6) of that convention states that the public concerned must be able to have access to all information relevant to the decision-making relating to the authorisation of activities referred to in Annex I to that convention, including in particular landfill sites receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes of waste.

78 Therefore, the public concerned by the authorisation procedure under Directive 96/61 must, in principle, have access to all information relevant to that procedure.

79 It follows from the decision making the reference and from the file submitted to the Court of Justice that the urban planning decision on the location of the installation at issue in the main proceedings constitutes one of the measures on the basis of which the final decision whether or not to authorise that installation will be taken and that it is to include information on the environmental impact of the

project, on the conditions imposed on the operator to limit that impact, on the objections raised by the parties to the urban planning decision and on the reasons for the choices made by the competent authority to issue that urban planning decision. Moreover, the applicable national rules require that that decision be attached to the application for a permit addressed to the competent authority. It follows that that urban planning decision must be considered to include relevant information within the meaning of Annex V to Directive 96/61 and that the public concerned must therefore, in principle, be able to have access to it during the authorisation procedure for that installation.

80 None the less, it follows from Article 15(4) of Directive 96/61 that the participation of the public concerned may be limited by the restrictions laid down in Article 3(2) and (3) of Directive 90/313. At the time of the events in the main proceedings, Directive 90/313 had, however, been repealed and replaced by Directive 2003/4. In the light of the correlation table annexed to that directive, the obligation to align European Union legislation with the Aarhus Convention and the redrafting of Article 15 of Directive 96/61 made during its subsequent codification by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8), it must be held that Article 15(4) of Directive 96/61 must be construed as referring to the restrictions under Article 4(1), (2) and (4) of Directive 2003/4.

81 Under point (d) of the first subparagraph of Article 4(2) of Directive 2003/4, Member States may provide for a request for information to be refused if disclosure of the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest.

82 However, taking account of, inter alia, the importance of the location of one or another of the activities referred to in Directive 96/61 and as results from paragraph 79 of this judgment, that cannot be the case with regard to a decision by which a public authority authorises, having regard to the applicable urban planning rules, the location of an installation which falls within the scope of that directive.

83 Even if it were not excluded that, exceptionally, certain elements included in the grounds for an urban planning decision may contain confidential commercial or industrial information, it is not in dispute in the present case that the protection of the confidentiality of such information was used, in breach of Article 4(4) of Directive 2003/4, to refuse the public concerned any access, even partial, to the urban planning decision concerning the location of the installation at issue in the main proceedings.

84 It follows that the refusal to make available to the public concerned the urban planning decision concerning the location of the installation at issue in the main

proceedings during the administrative procedure at first instance was not justified by the exception set out in Article 15(4) of Directive 96/61. It is for that reason necessary for the referring court to know whether the access to that decision given to the public concerned during the administrative procedure at second instance is sufficient to rectify the procedural flaw vitiating the administrative procedure at first instance and consequently rule out any breach of Article 15 of Directive 96/61.

85 In the absence of rules laid down in this field by European Union law, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under European Union law are a matter for the legal order of each Member State, provided, however, that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12, and Case C-378/10 *VALE Építési* [2012] ECR I-0000, paragraph 48 and the case-law cited).

86 So far as concerns the principle of equivalence, this requires that all the rules applicable to actions apply without distinction to actions based on infringement of European Union law and those based on infringement of national law (see, inter alia, Case C-591/10 *Littlewoods Retail and Others* [2012] ECR I-0000, paragraph 31, and Case C-249/11 *Byankov* [2012] ECR I-0000, paragraph 70). It is therefore for the national court to determine whether national law allows procedural flaws of a comparable internal nature to be rectified during the administrative procedure at second instance.

87 As regards the principle of effectiveness, while European Union law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of European Union law, such a possibility is subject to the condition that it does not offer the persons concerned the opportunity to circumvent the European Union rules or to dispense with applying them, and that it should remain the exception (Case C-215/06 *Commission* v *Ireland* [2008] ECR I-4911, paragraph 57).

88 In that regard, it is important to note that Article 15 of Directive 96/61 requires the Member States to ensure that the public concerned are given early and effective opportunities to participate in the procedure for issuing a permit. That provision must be interpreted in the light of recital 23 in the preamble to that directive, according to which the public must have access, before any decision is taken, to information relating to applications for permits for new installations, and of Article 6 of the Aarhus Convention, which provides, first, for early public participation, that is to say, when all options are open and effective public participation can take place, and, second, for access to relevant information to be provided as soon as it becomes available. It follows that the public concerned must have all of the relevant information from the stage of the administrative

procedure at first instance, before a first decision has been adopted, to the extent that that information is available on the date of that stage of the procedure.

89 As for the question whether the principle of effectiveness precludes rectification of the procedure at second instance by making available to the public relevant documents which were not accessible during the administrative procedure at first instance, it is apparent from the information provided by the referring court that, under the applicable national legislation, the administrative body at second instance has the power to amend the administrative decision at first instance. However, it is for the referring court to determine whether, first, in the context of the administrative procedure at second instance, all options and solutions remain possible for the purposes of Article 15(1) of Directive 96/61, interpreted in the light of Article 6(4) of the Aarhus Convention, and, second, regularisation at that stage of the procedure by making available to the public concerned relevant documents still allows that public effectively to influence the outcome of the decision-making process.

90 Consequently, the principle of effectiveness does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned the urban planning decision at issue in the main proceedings during the administrative procedure at first instance, provided that all options and solutions remain possible and that rectification at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.

91 Therefore, the answer to the second question is that Directive 96/61 must be interpreted as meaning that it:

– requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure for the installation concerned,

– does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest, and

– does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision, such as that at issue in the main proceedings, during the administrative procedure at first instance, provided that all options and solutions remain possible and that rectification at that stage of the procedure still allows that public effectively to influence

the outcome of the decision-making process, this being a matter for the national court to determine.

The third question

92 By its third question, the referring court asks, in essence, whether Directive 85/337 must be interpreted as precluding the validity of an opinion on the assessment of the environmental impact of a project from being validly extended for several years after its adoption and whether, in such a case, it requires that a new assessment of the environmental impact of that project be undertaken.

93 In that regard, the inšpekcia and the Slovak and Czech Governments maintain that Directive 85/337 is not applicable, *ratione temporis*, to the situation described by the referring court.

94 According to settled case-law, the principle that projects likely to have significant effects on the environment must be subject to an environmental assessment does not apply where the application for authorisation for a project was formally lodged before the expiry of the period set for transposition of Directive 85/337 (Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraphs 29 and 32, and Case C-81/96 *Gedeputeerde Staten van Noord-Holland* [1998] ECR I-3923, paragraph 23).

95 That directive is primarily designed to cover large-scale projects which will most often require a long time to complete. It would therefore not be appropriate for the relevant procedures, which are already complex at national level, to be made even more cumbersome and time-consuming by the specific requirements imposed by that directive and for situations already established to be affected by it (*Gedeputeerde Staten van Noord-Holland*, paragraph 24).

96 In the present case, it is apparent from the documents before the Court that the operator's steps to obtain the permit to complete the landfill project at issue in the main proceedings started on 16 December 1998 with the lodging of an application for an environmental impact assessment in respect of that project. However, it follows from Article 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) that Directive 85/337 had to be implemented by the Slovak Republic with effect from the date of that Member State's accession to the European Union, namely 1 May 2004.

97 Nevertheless, it must be noted that the grant by the Slovak administration of the permit to complete the landfill site at issue in the main proceedings required three consecutive procedures, each of which led to the adoption of a decision.

98 The operator's applications concerning the first two procedures were made on 16 December 1998 and on 7 August 2002, that is to say, before the expiry of the period set for the transposition of Directive 85/337. By contrast, the application for the integrated permit was submitted on 25 September 2007, which is after the expiry of that period. Therefore, it is necessary to determine whether the submission of the first two applications may be regarded as marking the formal initiation of the authorisation procedure within the meaning of the case-law referred to in paragraph 94 of this judgment.

99 In that regard, it is important first of all to state that the applications submitted during the first two stages of the procedure are not to be confused with mere informal contacts which are not capable of demonstrating the formal opening of the authorisation procedure (see, to that effect, Case C-431/92 *Commission* v *Germany*, paragraph 32).

100 Next, it must be pointed out that the environmental impact assessment completed in 1999 was carried out in order to enable completion of the landfill project which was the subject of the integrated permit. The subsequent steps taken in the procedure, and in particular, the issue of the construction permit, are based on that assessment. As the Advocate General has noted in point 115 of her Opinion, the fact that, under Slovak law, environmental impact is assessed separately from the actual authorisation procedure cannot extend the scope in time of Directive 85/337.

101 Likewise, it is apparent from the considerations set out in paragraph 79 of this judgment that the urban planning decision on the location of the landfill site at issue in the main proceedings constitutes an indispensable stage for the operator to be authorised to carry out the landfill project at issue. That decision, moreover, imposes a number of conditions with which the operator must comply when carrying out his project.

102 However, when examining a comparable procedure, the Court of Justice has taken the view that the date which should be used as a reference to determine whether the application in time of a directive imposing an environmental impact assessment was the date on which the project was formally submitted because the various phases of examination of a project are so closely connected that they represent a complex operation (Case C-209/04 *Commission* v *Austria* [2006] ECR I-2755, paragraph 58).

103 Finally, it is apparent from settled case-law that an authorisation within the meaning of Directive 85/337 may be formed by the combination of several distinct decisions when the national procedure which allows the developer to be authorised to start works to complete his project includes several consecutive steps (see, to that effect, Case C-201/02 *Wells* [2004] ECR I-723, paragraph 52, and Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 102). It follows that, in that situation, the date on which the application for a

permit for a project was formally lodged must be fixed as the day on which the developer submitted an application seeking to initiate the first stage of the procedure.

104 It follows from the foregoing considerations that the application for a permit for the landfill project at issue in the main proceedings was formally lodged before the date of the expiry of the period set for transposition of Directive 85/337. Consequently, the obligations arising from that directive do not apply to that project and therefore it is not necessary to answer the third question.

The fourth question

105 By its fourth question, the referring court asks, in essence, whether Articles 1 and 15a of Directive 96/61, read in conjunction with Articles 6 and 9 of the Aarhus Convention, must be interpreted as meaning that members of the public concerned must be able, in the context of an action under Article 15a of that directive, to ask the court or the competent independent and impartial body established by law to order interim measures of a nature temporarily to suspend the application of a permit within the meaning of Article 4 of that directive pending the final decision.

106 By virtue of their procedural autonomy, the Member States have discretion in implementing Article 9 of the Aarhus Convention and Article 15a of Directive 96/61, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine, in so far as the abovementioned provisions are complied with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable (see, by analogy, Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09 *Boxus and Others* [2011] ECR I-0000, paragraph 52).

107 Moreover, it is apparent from settled-case law that a national court seised of a dispute governed by European Union law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under European Union law (Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 21, and Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 67).

108 It must be added that the right to bring an action provided for by Article 15a of Directive 96/61 must be interpreted in the light of the purpose of that directive. The Court has already held that that purpose, as laid down in Article 1 of the directive, is to achieve integrated prevention and control of pollution by putting in place measures designed to prevent or reduce emissions of the activities listed in Annex I into the air, water and land in order to achieve a high level of protection of the environment (Case C-473/07 *Association nationale pour la protection des*

eaux et rivières and OABA [2009] ECR I-319, paragraph 25, and Case C-585/10 *Møller* [2011] ECR I-0000, paragraph 29).

109 However, exercise of the right to bring an action provided for by Article 15a of Directive 96/61 would not make possible effective prevention of that pollution if it were impossible to prevent an installation which may have benefited from a permit awarded in infringement of that directive from continuing to function pending a definitive decision on the lawfulness of that permit. It follows that the guarantee of effectiveness of the right to bring an action provided for in that Article 15a requires that the members of the public concerned should have the right to ask the court or competent independent and impartial body to order interim measures such as to prevent that pollution, including, where necessary, by the temporary suspension of the disputed permit.

110 In the light of the foregoing, the answer to the fourth question is that Article 15a of Directive 96/61 must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.

The fifth question

111 By its fifth question, the referring court asks, in essence, whether a decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61 and from Article 9(2) and (4) of the Aarhus Convention, which annuls a permit granted in infringement of the provisions of that directive, is capable of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.

112 As the Advocate General has noted in points 182 to 184 of her Opinion, the conditions set by Directive 96/61 restrict use of the right to property on land affected by an installation coming within the scope of that directive.

113 However, the right to property is not an absolute right and must be viewed in relation to its social function. Consequently, its exercise may be restricted, provided that those restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, disproportionate and intolerable interference, impairing the very substance of the right guaranteed (Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 355, and Joined Cases C-379/08 and C-380/08 *ERG and Others* [2010] ECR I-2007, paragraph 80).

114 As regards the objectives of general interest referred to above, established case-law shows that protection of the environment is one of those objectives and is therefore capable of justifying a restriction on the use of the right to property (see Case 240/83 *ADBHU* [1985] ECR 531, paragraph 13; Case 302/86 *Commission* v *Denmark* [1988] ECR 4607, paragraph 8; Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 32; and *ERG and Others*, paragraph 81).

115 As regards the proportionality of the infringement of the right of property at issue, where such an infringement may be established, it is sufficient to state that Directive 96/61 operates a balance between the requirements of that right and the requirements linked to protection of the environment.

116 Consequently, the answer to the fifth question is that a decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61 and from Article 9(2) and (4) of the Aarhus Convention, which annuls a permit granted in infringement of the provisions of that directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.

Costs

117 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 267 TFEU must be interpreted as meaning that a national court, such as the referring court, is obliged to make, of its own motion, a request for a preliminary ruling to the Court of Justice of the European Union even though it is ruling on a referral back to it after its first decision was set aside by the constitutional court of the Member State concerned and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court.**

2. **Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006, must be interpreted as meaning that it:**

– **requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure for the installation concerned,**

– **does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest, and**

– **does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision, such as that at issue in the main proceedings, during the administrative procedure at first instance, provided that all options and solutions remain possible and that regularisation at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.**

3. Article 15a of Directive 96/61, as amended by Regulation No 166/2006, must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.

4. A decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61, as amended by Regulation No 166/2006, and from Article 9(2) and (4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, which annuls a permit granted in infringement of the provisions of that directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.

[Signatures]

The Industrial Emissions Directive (IED) 2010/75/EU

Gabriella Gerzsenyi
European Commission, DG Environment
Industrial Emissions Unit
03.06.2013

To cover

1. EU legal framework on air quality and on industrial emissions

2. Revision of the IPPC Directive, adoption of the IED

3. Structure of the IED

4. Essential provisions of the IED

NB: BAT and LCPs to be addressed in separate presentations!

5. Interrelations with other legal instruments

EU legal framework on air quality

1. Addressing air pollution at national level / level of zones:

- Ambient Air Quality Directive (+ 4th daughter directive)

- NEC Directive

2. Addressing point source emissions

- stationary sources => IED

- mobile sources (traffic)

3. Links with Accession Treaty provisions (transitional derogations and intermediate ceilings)

The legal framework concerning industrial emissions in the European Union

IPPC Directive 2008/1/EC

Large Combustion Plants (LCP) Directive 2001/80/EC

Waste Incineration Directive 2000/76/EC

Directive on the limitation of emissions of VOC from solvents 1999/13/EC

Directives related to the titanium dioxide industry 78/176, 82/883 and 92/112

European Pollutant Release and Transfer Register (E-PRTR) Regulation 166/2006

Industrial Emissions Directive (IED) 2010/75/EU

IED: why?

- *Merging of 7 existing Directives*
- *Strengthening of BAT and role of the BAT reference documents (conclusions)*
- *New minimum ELVs for LCP bringing them in line with BAT*
- *Strengthened provisions on inspections, review of permit conditions and reporting on compliance*
- *Stronger provisions on soil & groundwater protection*
- *Extended scope*

Scope of IED

Some 50,000 installations across EU (Annex I activities)

Large variety of industrial/agro-industrial activities

Energy industries…

Mineral industries…

Metal industries…

Chemical industries…

Waste management…

Intensive livestock (pigs/poultry)…






Structure of IED

BAT based permit conditions

Ch. I: Common provisions

Ch. II: Provisions for all activities listed in Annex I

Ch. III: Special provisions for combustion plants [> 50 MW]

Ch. IV: Special provisions for waste (co-)incineration plants

Ch. V: Special provisions for installations and activities using organic solvents

Ch. VI: Special provisions for installations producing TiO2

Ch. VII: Committee, transitional and final provisions

Annexes

Sectoral « minimum » requirements incl. emission limit values

What are the essential requirements?

Prevention of pollution and, if not feasible, reduction

Permit is required for operating the installation

Permit needs to contain permit conditions including emission limit values (ELVs) for all relevant pollutants, which are to be based on the use of the best available techniques (BAT)

Access to information and public participation

Issues addressed by the integrated approach

1. Contribution to emissions? Why important for air / water / soil?

2. Prevention of waste

3. Energy efficiency

4. Accident prevention (Seveso Directive!)

Some other important provisions

IED – Cessation of activities (Art. 22)

- ***Baseline report***
  - Required where relevant hazardous substances are used or produced
  - Contains information on the state of soil and groundwater contamination by hazardous substances
  - Criteria for content to be established in COM guidance
- ***Site closure / remediation***
  - Once activity stops operating: operator **assesses** the state of soil and groundwater contamination and **compares** with **baseline** report
  - Where **significant pollution**: operator shall take necessary measures so as to return the site to the "baseline" state
  - Where **significant risk to human health and the environment**: operator shall take necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site ceases to pose significant risk

IED – Environmental inspections (Art. 23)

- ***environmental inspection plan*** *at national, regional or local level covering all installations*
- *CA shall regularly draw up* ***programmes for routine environmental inspections****, incl. frequency of site visits*
  - Frequency: determined on the basis of risk appraisal of installations, but minimum yearly (highest risk) up to 3-yearly (lowest risk)
  - Criteria: potential/actual impacts, compliance track, EMAS, …
  - If inspection has identified important case of non-compliance: additional site visit within 6 months
- ***Non-routine*** *environmental inspections*
  - serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance, and before granting/reconsidering/updating permit
- *Following each site visit:* ***report*** *to be notified to operator concerned within 2 months and made publicly available within 4 months of site visit*

IED – Access to information (Art. 24)

- *The competent authority shall make available to the public via the **Internet** the following information:*
  - the content of the decision, including a copy of the permit and any subsequent updates;
  - the reasons on which the decision is based;
  - where a derogation is granted in accordance with Article 15(4), the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed

Interrelations with other instruments 1

Environmental quality standards for the purposes of Ambient Air Quality Directive 2008/50/EC

- *Article 18 IED*

Environmental quality standards

Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.

- Issue of *Transitional National Plans (Article 32 IED)*

Interrelations with other instruments 2

Preliminary ruling case on NEC Directive vs IPPC Directive (Joined Cases C-165/09 to C-167/09)

The IPPC Directive must be interpreted as meaning that, when granting an environmental permit for the construction and operation of an industrial installation, MS are not obliged to include among the conditions for grant of that permit the national emission ceilings for SO_2 and NO_x laid down by the NEC Directive, whilst they must comply with the obligation arising from that Directive to adopt or envisage, within the framework of national programmes, appropriate and coherent policies and measures capable of reducing, as a whole, emissions of inter alia those pollutants to amounts not exceeding the ceilings laid down in Annex I.

Interrelations with other instruments 3

- *Intermediate emission ceilings for large combustion plants, laid down in the Accession Treaty (applicable for BG, LT, PL and RO, during the period of transitional derogations)*

- *E-PRTR Regulation: reporting!*

- *Environmental Impact Assessment Directive (2011/92/EU): possible coordinated approach, stipulated by both directives*

- Entry into force of IED
- Member States fully transpose the IED.
  The Directive applies to all <u>new</u> installations from this date onwards.
- All <u>existing</u> installations previously subject to IPPC, WI, SE and TiO2 Directives must meet the requirements of the IED.
  <u>Existing LCP</u> do not yet need to meet new ELVs (Ch. III, Annex V).
- <u>Existing</u> installations operating newly prescribed activities (e.g. waste installations, wood based panels, wood preservation) must meet the requirements of the IED.
- <u>Existing LCP</u> must meet the requirements set out in Chapter III and Annex V
  - Transitional flexibilities:
    - TNP: - 30/6/2020
    - Limited life time derogation: - 31/12/2023
    - Small isolated systems: - 31/12/2022
    - District heating: - 31/12/2019

For more information…

- ***DG ENV industrial emissions website***

http://ec.europa.eu/environment/air/pollutants/stationary/index.htm

- ***European IPPC Bureau (BREFs)***

http://eippcb.jrc.ec.europa.eu/reference/

- **Please contact us if you have any further questions:**

  ENV-IED-INFO@ec.europa.eu

The Industrial Emissions Directive (IED) 2010/75/EU

Gabriella Gerzsenyi
European Commission, DG Environment
Industrial Emissions Unit
03.06.2013

BAT:
the core element of IED

Comparison with the IPPC Directive

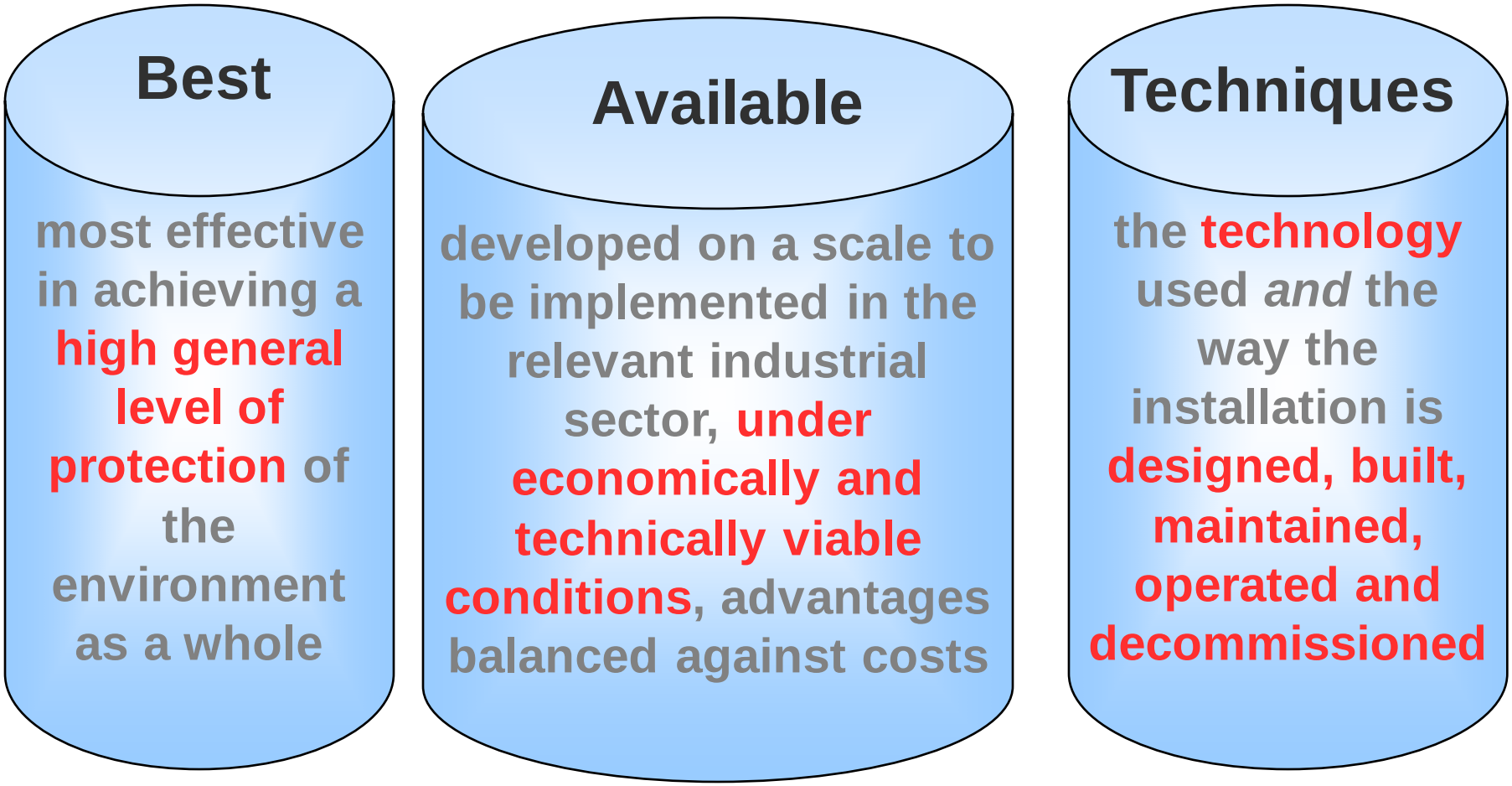
SAME in both directives: definition of BAT

NEW: definition of BREF, BAT conclusions, BAT-AEL

Adoption process of BREFs: significant changes

Legal status of BREFs / BAT conclusions: significant changes

Best Available Techniques (BAT)



BREFs and their BAT Conclusions

- *Description of sector, activities, ..*
- *Current emission and consumption levels*
- *Techniques to be considered in determining BAT*
- ***BAT Conclusions containing***
  BAT (list of techniques)
  + BAT–associated emission levels
  (BAT AEL)
- *Emerging techniques*
- *Recommendations for future work*

Comitology
Implementing Act

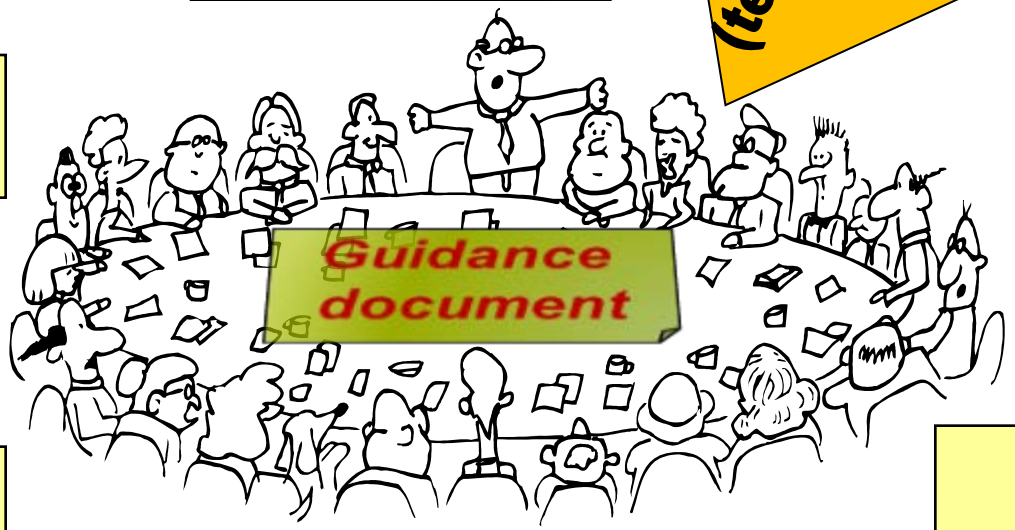
BAT information exchange

"Sevilla Process"

IPPC Bureau

Installation level data (techniques, emissions, ...)

MS experts



Industry experts

NGO experts

BREF
with BAT conclusions

Developing BAT Conclusions

1. JRC-IPPCB Sevilla information exchange process

Kick-off meeting

Draft(s) submitted for comments

TWG Final meeting

Final draft

Forum opinion

Committee vote

2. ENV Brussels adoption process

BAT conclu-sions

IED Forum (art. 13)

- *Expert group (established by COM Decision)*
  - **MS, Industry, NGOs and COM**
- *Provide its opinion on the practical arrangements for the exchange of information and in particular:*
  - a) **the rules of procedure of the forum**
  - b) **the work programme for the exchange of information**
  - c) **guidance on the collection of data**
  - d) **guidance on the drawing up of BREFs and on their quality assurance including the suitability of their content and format**
- *Provide its opinion on the proposed content of the BREFs*
  - **Opinion is to be made publicly available**
  - **Opinion is** to be taken into account **by Commission when proposing decisions on BAT conclusions to be adopted via the Art. 75 Committee**

IED Committee (art. 75)

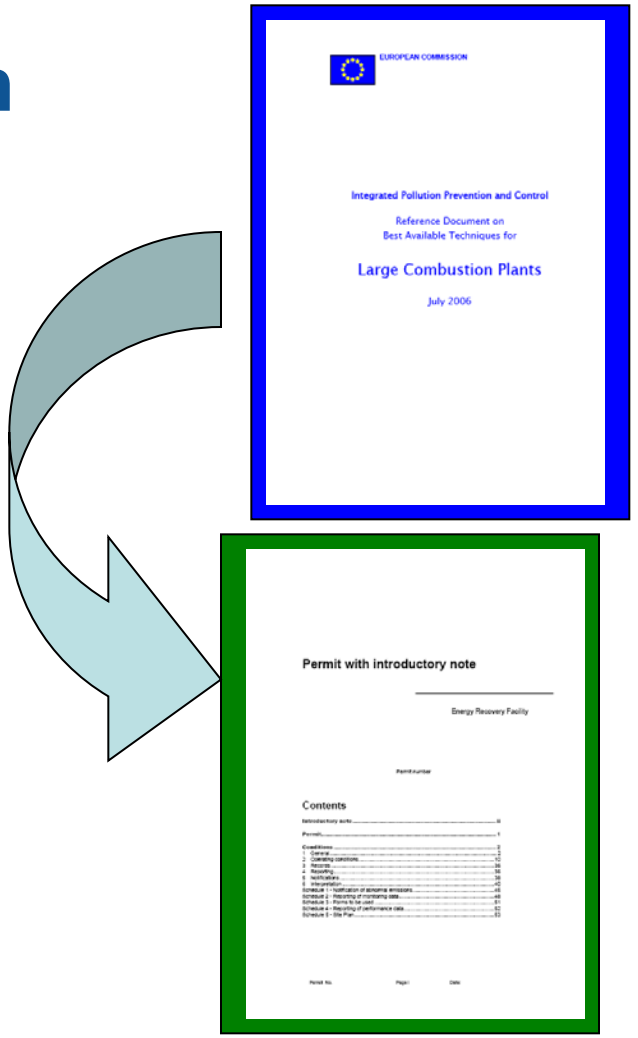
- *MS representatives*
- *Operates under examination procedure set out in Regulation 182/2011 laying down the rules and general principles in the exercise of implementing powers*

Will be involved in adoption of key documents:

- *Certain guidance under Article 13(3)(c) and (d) – agreed in Nov. 11*
  - **guidance on the collection of data**
  - **guidance on the drawing up of BREFs and on their quality assurance including the suitability of their content and format.**
- *BAT conclusions under Article 13(4)*
- *Implementing rules for LCP under Article 41*
  - **Determination of start-up and shut-down periods**
  - **Transitional National Plan rules – Agreed in Nov. 11**
- *Type, format, frequency of reporting by MS under Article 72*

Role of BAT conclusions in permitting under IED - 1

BAT conclusions shall be the reference for setting all the permit conditions



Permits must contain emission limit values (ELVs) set by the competent authority that ensure that emissions do not exceed BAT emission levels (BAT AELs)

Role of BAT conclusions in permitting under IED - 2

Derogation from BAT AELs is only allowed in specific and justified cases:

- only if the costs are disproportionately higher than benefits due to local/installation specific situation

- MS need to report to the public/Commission on application of derogations

- minimum criteria to be complied with

- Commission may adopt guidance

Other relevant provisions of the IED

Article 13(7)

Pending the adoption of a relevant decision, the conclusions on best available techniques from BAT reference documents adopted by the Commission prior to the date referred to in Article 83 shall apply as BAT conclusions for the purposes of this Chapter except for Article 15(3)and (4).

Article 21(3)

Within 4 years of publication of decisions on BAT conclusions relating to the main activity of an installation, the competent authority shall ensure that:

(a) all the permit conditions for the installation concerned are reconsidered and, if necessary, updated to ensure compliance with this Directive, in particular, with Article 15(3) and (4),where applicable;

(b) the installation complies with those permit conditions.

The reconsideration shall take into account all the new or updated BAT conclusions applicable to the installation and adopted in accordance with Article 13(5) since the permit was granted or last reconsidered.

Relevant provisions of the IPPCD

Article 9(4)

The emission limit values shall be based on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

In all circumstances, the conditions of the permit shall contain provisions on the minimisation of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.

+ compliance with EQS

Article 13(2)(b)

Permit reconsideration shall be undertaken where substantial changes in the best available techniques make it possible to reduce emissions significantly without imposing excessive costs.

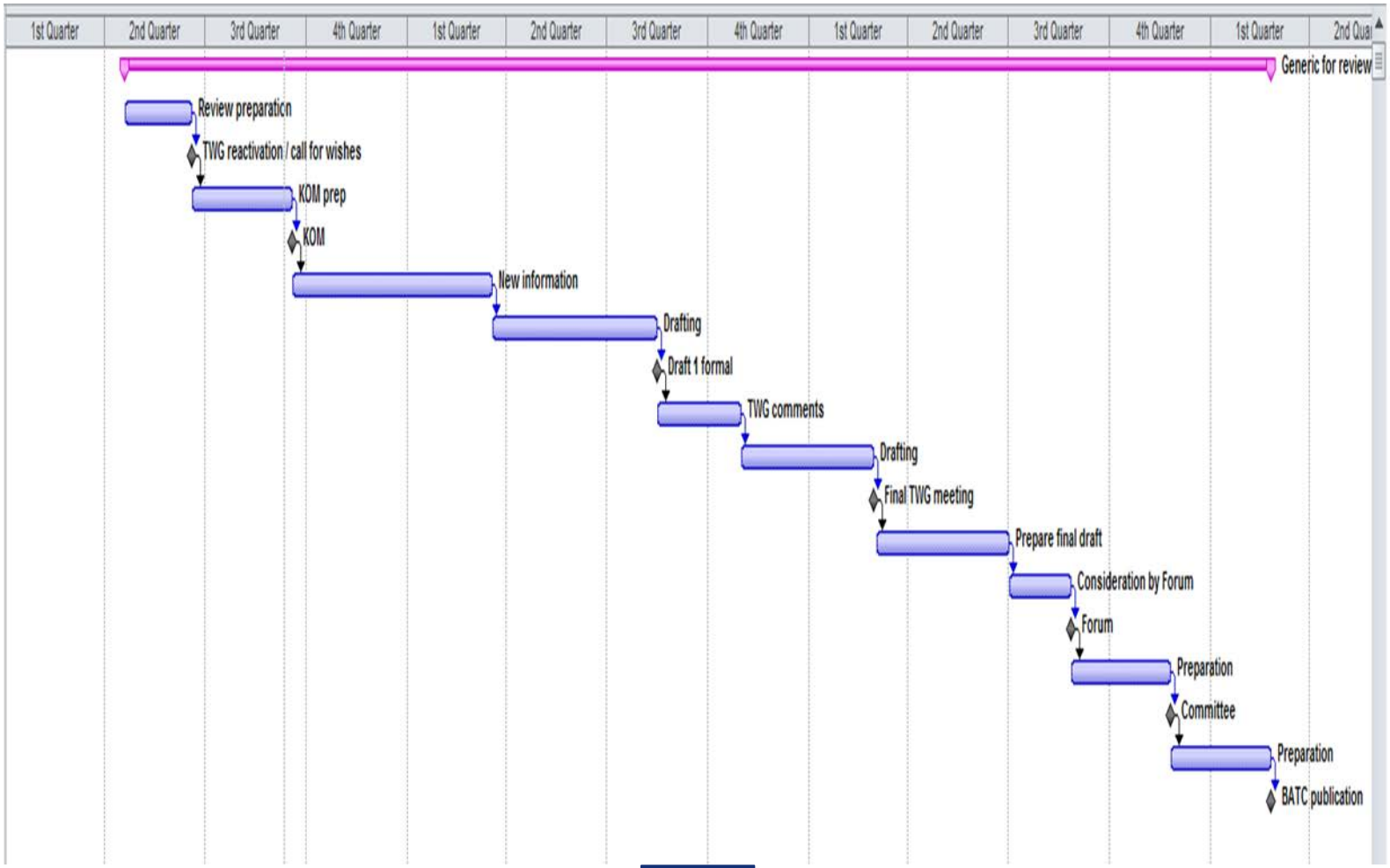
Chlor-Alkali case as an example

- BAT for the chlor-alkali industry (CAK BREF) adopted by the Commission in 2001
- according to the CAK BREF, the BAT for the chlor-alkali industry would be the conversion of the mercury cells technique to the membrane cells technique (no deadline for such a conversion)
- complaint to the Commission on voluntary agreements

- confirmed by the case-law of the EU Court of Justice that the BREF has no binding effect or interpretative value for the IPPCD, as it is limited to providing an inventory of technical knowledge on the best available techniques (Case C-473/07, "French poultry case")
- additional procedural information: CAK BREF is currently being updated, with explicit technical conclusion that the mercury cells technique cannot be considered as BAT under any circumstances

- solid basis to launch an infringement case???

Adoption of BAT Conclusions



BAT conclusions published so far

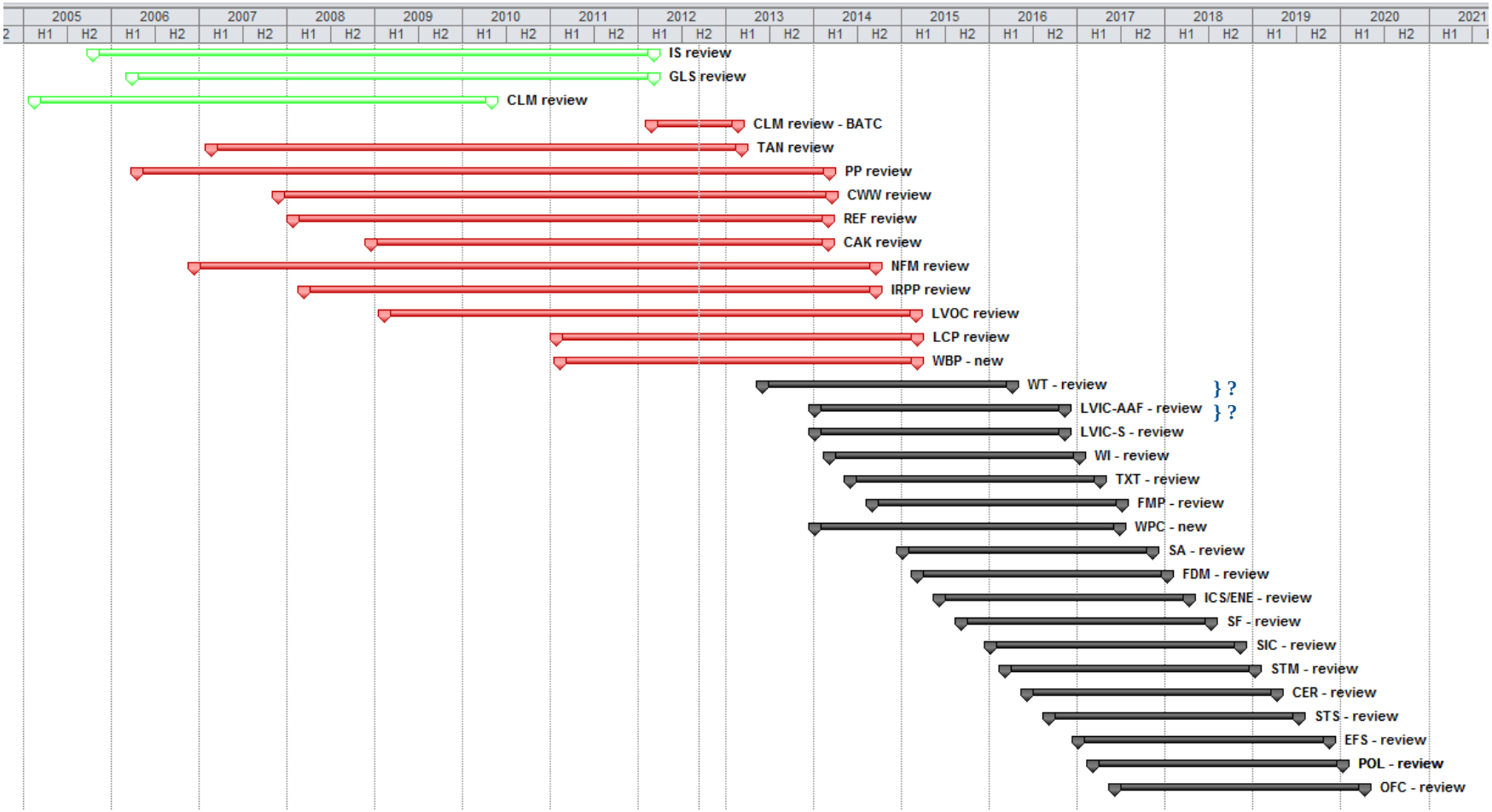
- Commission Implementing Decision 2012/134/EU for the manufacture of glass

- Commission Implementing Decision 2012/135/EU for iron and steel production

- Commission Implementing Decision 2013/84/EU for the tanning of hides and skins

- Commission Implementing Decision 2013/163/EU for the production of cement, lime and magnesium oxide

Development of BAT Conclusions: work programme



Green = completed, Red = On-going, Black = future

For more information…

- ***DG ENV industrial emissions website***

http://ec.europa.eu/environment/air/pollutants/stationary/index.htm

- ***European IPPC Bureau (BREFs)***

http://eippcb.jrc.ec.europa.eu/reference/

- **Please contact us if you have any further questions:**

  ENV-IED-INFO@ec.europa.eu

Enforcement of EU and national law on industrial emissions with focus on inspections and penalties

Peter VAJDA

ERA
Academy of European Law

European Commission

OUTLINE

1. APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS
2. OVERVIEW OF PENALTIES
   - PENALTIES IN RELATION TO ENVIRONMENTAL LAW
   - EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS
3. PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS
   - KEY ENFORCABLE PROVISIONS OF LEGISLATION ON INDUSTRIAL EMISSIONS
   - ADMINISTRATIVE AND CRIMINAL SANCTIONS
4. INSPECTIONS
5. GOOD PRACTICES

ERA
Academy of European Law

European Commission

OUTLINE

1. APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS
2. OVERVIEW OF PENALTIES
   - PENALTIES IN RELATION TO ENVIRONMENTAL LAW
   - EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS
3. PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS
   - KEY ENFORCABLE PROVISIONS OF LEGISLATION ON INDUSTRIAL EMISSIONS
   - ADMINISTRATIVE AND CRIMINAL SANCTIONS
4. INSPECTIONS
5. GOOD PRACTICES

ERA
Academy of European Law

European Commission

APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS

IPPC Directive 2008/1/EC

Large Combustion Plants Directive 2001/80/EC

Waste Incineration Directive 2000/76/EC

Directive on the limitation of VOC emissions from solvents 1999/13/EC

Directives related to the titanium-dioxide industry 78/186, 82/883, 92/112

RELATION BETWEEN IPPC/IED

European Pollutant Release and Transfer Register (E-PRTR) Regulation 166/2006

Industrial Emissions Directive (IED) 2010/75/EU

ERA
Academy of European Law

European Commission

APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS

IPPC DIRECTIVE

- Covers a wide range of industrial activities (energy sector, steel plants, chemical plants, cement kilns, intensive livestock, etc.)
- 50.000+ installations covered EU-wide
- Use of the best available techniques (see later)
- Obligation to hold a permit compliant to the Directive and covering the installation's emissions to air, (surface and ground-) water and to land
- Installation = stationary technical unit + directly associated activities
- Periodical reconsideration of the permits, substantial changes → new permit
- Public participation, access to justice

APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS

BAT concept: the core of the IPPC Directive

Best

most effective in achieving a **high general level of protection** of the environment as a whole

Available

developed on a scale to be implemented in the relevant industrial sector, **under economically and technically viable conditions**, advantages balanced against costs

Techniques

the **technology** used *and* the way the installation is **designed, built, maintained, operated and decommissioned**

ERA
Academy of European Law

European Commission

BAT INFORMATION EXCHANGE

"Sevilla Process"

Installation level data (techniques, emissions, ...)

MS experts

IPPC Bureau

Industry experts

NGO experts

BREF
with BAT conclusions

ERA
Academy of European Law

European Commission

APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS

LCP DIRECTIVE

- Emission limit values for SO_2, NO_x and dust for plants with a rated thermal input of equal to or more than 50 MW
- More information in separate section

WI DIRECTIVE

- Emission limit values and technical measures for waste incineration and waste co-incineration plants
- Rules on monitoring

VOC DIRECTIVE

- Technical provisions on the use of organic solvents
- Chemical plants, smaller installations (dry cleaners)

ERA
Academy of European Law

European Commission

APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS

IE DIRECTIVE

- Recasts the IPPC Directive and includes the sectoral directives within one framework
- Similar scope but with certain new activities
- Chapters/annexes with special technical provisions: LCPs (Chapter III / Annex V), waste incineration (Chapter IV / Annex VI), VOCs (Chapter V / Annex VII)
- BREFs → BAT conclusions (Art. 14-15) "BAT conclusions shall be the reference for setting permit conditions"
- Provision on inspections (Art. 23) and penalties (Art. 79)
- First piece of EU environmental law with provisions on inspections (using the RMCEI as a reference)

OUTLINE

1. APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS
2. **OVERVIEW OF PENALTIES**
   - **PENALTIES IN RELATION TO ENVIRONMENTAL LAW**
   - **EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS**
3. PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS
   - KEY ENFORCABLE PROVISIONS OF LEGISLATION ON INDUSTRIAL EMISSIONS
   - ADMINISTRATIVE AND CRIMINAL SANCTIONS
4. INSPECTIONS
5. GOOD PRACTICES

ERA
Academy of European Law

European Commission

OVERVIEW OF PENALTIES

PENALTIES IN RELATION TO ENVIRONMENTAL LAW

- Essential tools in the effective enforcement and implementation of EU & national environmental legislation
- Administrative and criminal sanctions
- Adoption of penalties as an enforcement mechanism for ensuring that legislation is complied with → competence of the Member States → differences
- Wide application outside the field of industrial emissions (e.g. nature protection, waste management)
- Discretionary application of penalties by Member States
- Market-based instruments → ideally, enforcement should not be necessary, however, it is very important to safeguard a proper functioning of the market
- COM study (Oct 2011): Provisions on penalties related to legislation on industrial installations

ERA
Academy of European Law

European Commission

OVERVIEW OF PENALTIES

EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS

- Current examples: Art. 16 LCP, Art. 19 WID, Art. 14 VOC
- Criteria undefined in current EU legal framework, COM study/workshop tried to develop certain lines of interpretation
- **Effectiveness**: penalties are capable of ensuring compliance with EU law and achieving the desired objective
- **Proportionality**: penalties adequately reflect the gravity of the violation and do not go beyond what is necessary to achieve the desired objective
- **Dissuasiveness**: penalties have a deterrent effect on the offender which should be prevented from repeating the offence and on the other potential offenders to commit the said offence

ERA
Academy of European Law

European Commission

OVERVIEW OF PENALTIES

EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS

- inherent challenge: limited literature and case-law, divergence between MSs, three criteria closely interlinked
- Challenges arising from the definition:
  - lack of empirical and evidential analysis of the penalties as applied in practice (application of criteria should be guided by the specific circumstances of individual cases and viewed within the wider context of the national enforcement systems within MSs)
  - significant differences between national legal and institutional frameworks and practices and economic situations of each MS
  - differences in the sanctions applied (e.g. administrative, criminal, quasi-criminal) and in the ranges and levels of penalties imposed
  - no EU mandatory level of 'minimum' or 'maximum' fine for non-compliance with a particular legislative provision.

ERA
Academy of European Law

European Commission

OUTLINE

1. APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS
2. OVERVIEW OF PENALTIES
   - PENALTIES IN RELATION TO ENVIRONMENTAL LAW
   - EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS
3. **PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS**
   - **KEY ENFORCABLE PROVISIONS OF LEGISLATION ON INDUSTRIAL EMISSIONS**
   - **ADMINISTRATIVE AND CRIMINAL SANCTIONS**
4. INSPECTIONS
5. GOOD PRACTICES

ERA
Academy of European Law

European Commission

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

KEY ENFORCABLE PROVISIONS – IPPC

- Article 4 - No new installation shall be operated without a permit
- Article 5 - Existing installations shall have permits in accordance with the Directive by 30 October 2007
- Article 6 - Applications for permits shall contain specific information listed
- Article 12(1) - Operators shall inform the competent authorities of any planned change in the operation
- Article 12(2) - Operators shall request a permit when they are planning substantial changes in their installation
- Article 14(a) - Operators shall comply with the conditions of a permit when operating the installation
- Article 14(b) - Operators shall regularly inform the competent authority of the results of monitoring of releases
- Article 14(c) - Operators shall afford the competent authority all necessary assistance with inspections

ERA
Academy of European Law

European Commission

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

KEY ENFORCABLE PROVISIONS – LCP

- Article 4(1) – Operators of existing plants to comply with ELVs
- Article 4(2) – Operators of new plants to comply with ELVs
- Article 4(4) – Operators to submit each year to the competent authority a record of the used and unused time allowed for the plants' remaining operational life.
- Article 7(1) – In case of breakdown the operator must reduce or close down operations if a return to normal operation is not achieved within 24 hours, or operate the plant using low polluting fuels. In any case the CA shall be notified within 48 hours.
- Article 9 – Waste gases shall be discharged in controlled fashion by means of a stack & in accordance with the licence. The stack height must be calculated as to safeguard health and the environment.

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

KEY ENFORCABLE PROVISIONS – LCP (cont.)

- Article 10 – Where a combustion plant is extended by at least 50 MW, ELVs set in part B of the Annexes shall apply to the new part & fixed in relation to the thermal capacity of the entire plant
- Article 13 The operator shall inform the CA […] about results of continuous measurements, the checking of measuring equipment, & all individual & other measurements carried out to assess compliance.

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

KEY ENFORCABLE PROVISIONS – WID (examples)

- Article 4(1) – No incineration or co-incineration plant shall operate without a permit.
- Article 4(2) – Applications for permits shall contain a description of specific measures.
- Article 5(1) – Operator shall take all necessary precautions concerning the delivery and reception of waste in order to prevent or to limit negative effects on human health and environment.
- Article 7 – Requires incineration plants to be designed, equipped, built and operated in such a way that they comply with the air emission limit values set in this article.
- Article 13 (2) – In case of breakdown, the operator shall reduce or close down operations as soon as practicable until normal operations can be restored.

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

KEY ENFORCABLE PROVISIONS – SUMMARY (KEY OBLIGATIONS)

- Obligation 1: to **apply** for a permit for existing and new installations
- Obligation 2: to **supply** information for application for permits
- Obligation 3: to **notify** the competent authority of any changes in the operation of an installation
- Obligation 4: to **comply** with the conditions set in the permit or mandatory ELVs

ERA
Academy of European Law

European Commission

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

ADMINISTRATIVE AND CRIMINAL SANCTIONS – APPROACH

- No general practice regarding industrial installations amongst MSs
- Common law countries → no administrative sanctions in place for offences (UK: new legislation of 2010 → "civil sanctions")
- Parallel use of both systems: Denmark, Greece, Hungary, Netherlands, Poland, Portugal, Romania, Czech Republic, Sweden
- Administrative and criminal sanctions cannot be applied simultaniously: Austria, Belgium, Germany, Slovakia, Spain („non bis in idem")
- Differences between centralized and federal states (e.g. in Spain, several Autonomous Communities - but not all of them - have established their own sanctioning regime for the infringement of environmental legislation)
- Distinction between natural and legal persons

ERA
Academy of European Law

European Commission

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

ADMINISTRATIVE SANCTIONS – FINANCIAL PENALTIES

- Main tool: fines (amount may vary significantly amongst the different MSs)

LV: €2,134

PT: €2.5m

- General practice: legislation provides a range of fines, depending mainly on
  - severity of the offence and
  - its effect on the environment.

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

ADMINISTRATIVE SANCTIONS – ADDITIONAL/OTHER ADMINISTRATIVE MEASURES

Examples:

- restriction, suspension or prohibition/ban of the activity (in general);
- cancellation of the licence or restriction of its terms;
- seizure of tools, machinery and equipment;
- suspension of the right to obtain subsidies or other benefits issued by national or European public authorities or services;
- loss of tax benefits, credit benefits and credit financing acquired prior to the offence;
- imposition of rectification or corrective measures on the operator;
- closure of the installation concerned.

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

QUASI-CRIMINAL SANCTIONS

- Not applied generally;
- “Misdemeanours”, “petty offences”;
- Similar penalties to criminal sanctions with a simplified procedure;
- First instance are handled by the administrative authorities rather than by the judicial system;
- In certain cases, it is applicable to natural persons only (Hungary);
- Austria, Germany, Estonia: quasi-criminal sanctions instead of administrative sanctions (alongside with criminal sanctions and administrative enforcement measures).

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

CRIMINAL SANCTIONS

- In the vast majority of Member States (except e.g. Portugal), usually combined with sectoral legislation;
- Primary penalties: imprisonment, fine (with wide variations, illustrative example: AT and PL for breach of key obligations 1&4)

PL: €1,250

AT: €1.8m

PL: 30 days

AT: 5 years

PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS

CRIMINAL SANCTIONS

- Combination of criminal sanctions is possible in most MSs;
- Daily fines: Austria, Germany (€4 to €5000);
- Highest criminal penalty: Ireland → maximum penalty for all four obligations is €15,000,000 / 15 years imprisonment. In Belgium (Wallonia), the maximums are € 10,000,000 / 15 years imprisonment, respectively;
- Key Obligation 1 and 4 → most penalized amongst the MSs;
- Key Obligation 2 → least penalized.

OUTLINE

1. APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS
2. OVERVIEW OF PENALTIES
   - PENALTIES IN RELATION TO ENVIRONMENTAL LAW
   - EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS
3. PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS
   - KEY ENFORCABLE PROVISIONS OF LEGISLATION ON INDUSTRIAL EMISSIONS
   - ADMINISTRATIVE AND CRIMINAL SANCTIONS
4. **INSPECTIONS**
5. GOOD PRACTICES

ERA
Academy of European Law

European Commission

INSPECTIONS

RELEVANCE FOR PENALTIES

- Main tool to find out compliance with Key Obligation 4
- Clarify discrepancies between submitted documentation and real life
- Competent authority can be different for inspections and penalties
- No harmonized legislation at EU level
- IPPC Article 14(c) – Operators shall afford the competent authority all necessary assistance with inspections (KO 4)
- RMCEI (2001)

INSPECTIONS

INSPECTIONS IN THE IED

- Proposal made extensive use of the RMCEI and the accumulated experience after its adoption;
- Inspection plans: all installations should be covered by an environmental inspection plan at national, regional or local level, MS shall ensure that this plan is regularly reviewed and, where appropriate, updated;
- Harmonized criteria for the elements of the inspection plans;
- System of routine inspections (based on the inspection plans), risk-based approach for frequency;
- Inspection reports shall be made available to the public after a consultation period with the operator

OUTLINE

1. APPLICABLE EU LAW ON INDUSTRIAL EMISSIONS
2. OVERVIEW OF PENALTIES
   - PENALTIES IN RELATION TO ENVIRONMENTAL LAW
   - EFFECTIVENESS, PROPORTIONALITY, DISSUASIVENESS
3. PENALTIES IN RELATION TO INDUSTRIAL EMISSIONS
   - KEY ENFORCABLE PROVISIONS OF LEGISLATION ON INDUSTRIAL EMISSIONS
   - ADMINISTRATIVE AND CRIMINAL SANCTIONS
4. INSPECTIONS
5. **GOOD PRACTICES**

ERA
Academy of European Law

European Commission

GOOD PRACTICES

GOOD PRACTICES

- Examples of successful approaches to enforcement
- Study lists a number of examples (administrative, criminal) from 7 selected MSs
- No sorcerer's stone which could be applied in all MSs (effectiveness, proportionality and dissuasiveness may have completely different meanings and contributing factors in different MSs/cultures)

THANK YOU FOR YOUR ATTENTION!

CONTACT

peter.vajda@energy-community.org

Case Study A

The below presented case study (based on a real case) is for the review and discussion of the group members. Please exchange your views on what would be the legal assessment in your respective Member States and regarding the probable consequences.

The dam of a storage pond broke at 12:25 pm on 04.10.2010 and the red mud disaster in its wake turned out to be the greatest environmental crisis ever of Hungary and of the whole region. The red mud which got loose reached the municipalities of Devecser, Kolontár, Somlávásárhely, Somlójenő, Tüskevár, Apácatorna and Kisberzseny. The red mud contaminated the valleys of the Torna creek and the Marcal river, almost reaching the river Raba. Through the waterflows of the Torna, Marcal, Raba and the Moson branch of the Danube, the highly alkaline slurry entered the Danube, causing contamination in all the affected waters (to a highly variable extent). Along the Torna and the impacted section of Marcal, practically all forms of aquatic life were destroyed. The disaster left 10 people dead and almost 150 injured, including local residents and participants in the rescue operations. The spilt mud and alkaline slurry polluted about 1,000 acres of land. The amount emitted was about 0.9–1 million cubic meters.

Several legal procedures followed the case and a criminal procedure against the operators of the plant in front of the domestic court is still underway.

Discussion Points

1. Which court would deal with the case (administrative, criminal aspects both to be considered)?
2. What would be the main points for the court's analysis in your respective Member State?
3. What kind of court procedures would such an accident trigger in your respective Member State?

Case Study B

The below presented case study is for the review and discussion of the group members. Please exchange your views on what would be the legal assessment in your respective Member States and regarding the probable consequences.

The company called “Big Energy” is operating a thermal power plant in your Member State, in the proximity of a residential area. The plant has a rated thermal input of more than 50 MW.

Scenarios

1. The plant is operating without a valid IPPC/IED permit. Which authority would deal with the case and what would be the likely consequences?
2. The plant operates with a valid IPPC/IED permit, but its emissions are not in line with the limit values established in the permit. Which authority would deal with the case and what would be the likely consequences?
3. Due to an unexpected event at the plant, accidental emissions are emitted and it causes severe problems in the neighbouring residential area. Which authority would deal with the case and what would be the likely consequences?

Case Study C

The below presented case study is for the review and discussion of the group members. Please exchange your views on what would be the legal assessment in your respective Member States and regarding the probable consequences.

The company “Chemical Manoeuvres” intends to set up a chemical plant as a greenfield investment in a Member State. In order to get licensed, it submits all the necessary documentation to the competent authority (environmental agency), however, after a lengthy procedure, the competent authority refuses to grant the permit, mainly to the concerns of the local community.

The company “Chemical Manoeuvres” files an appeal to the administrative court against the decision of the competent authority.

Discussion Points

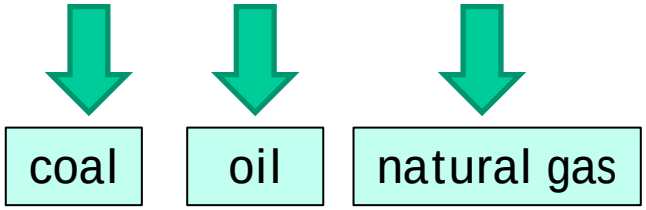
1. What would be the most important elements for clarification at the court’s procedure in your respective Member State?
2. Would there be a possibility in your respective Member State for the court to deliver the permit or shall it only refer the case back to the competent authority?
3. What is the average timeframe for such a procedure in your respective Member State?

Large Combustion Plants and their specific situation

Peter VAJDA

What is a large combustion plant?

- LCPD definition: any technical apparatus in which fuels are oxidised in order to use the heat thus generated
- Fuels can be solid, liquid or gaseous



- Plants for the generation of heat and electricity
- 50 MW rated thermal input: legislative threshold
- How does a coal-fired power plant work?

History of the LCP Directive

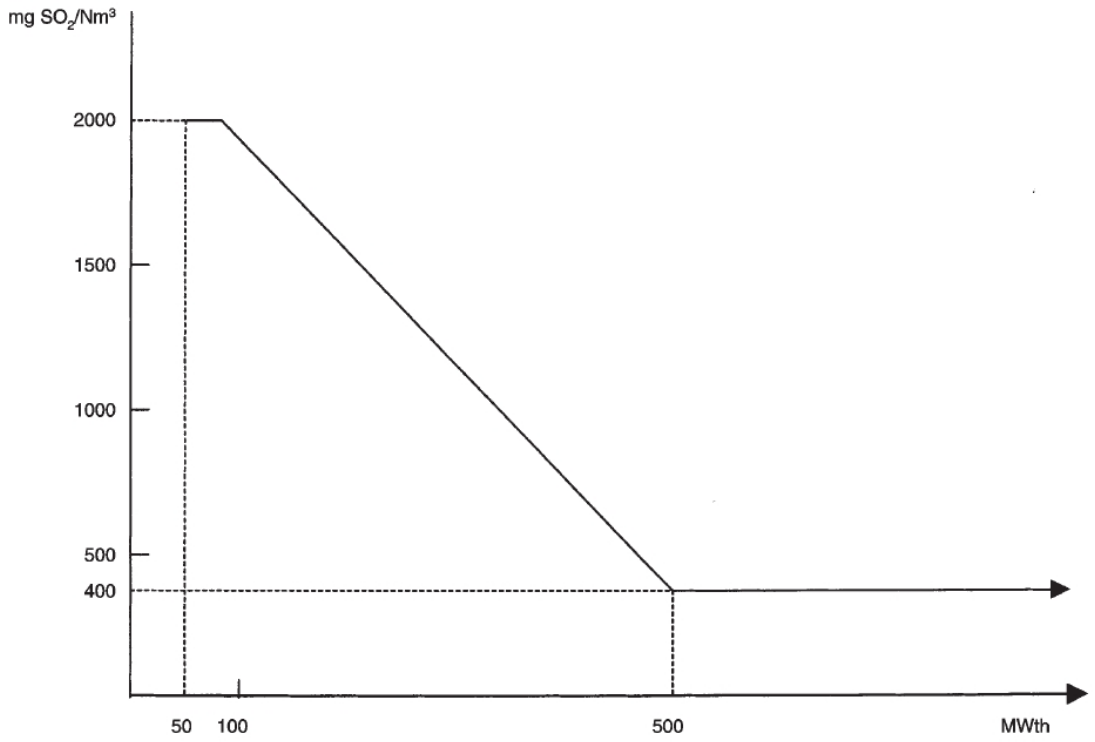
- First European legislative instrument in this field adopted in 1988 (88/609/EEC)
- Current LCP Directive adopted in 2001
- In force until end 2015
- From 1 January 2016, IED (Chapter III and Annex V) will take over and LCPD repealed

Main elements of the LCPD

- Setting emission limit values for SO_2, NO_x and dust (particulate matter) for plants with a rated thermal input ≥ 50 MW
- ELVs may vary based on the RTI and the age of the plant and on the type of fuel used (see next slide)
- Different ELVs for new and existing plants ("old new", "new new" → historical reasons)
- Provisions on monitoring
- Flexibility mechanisms (see later)

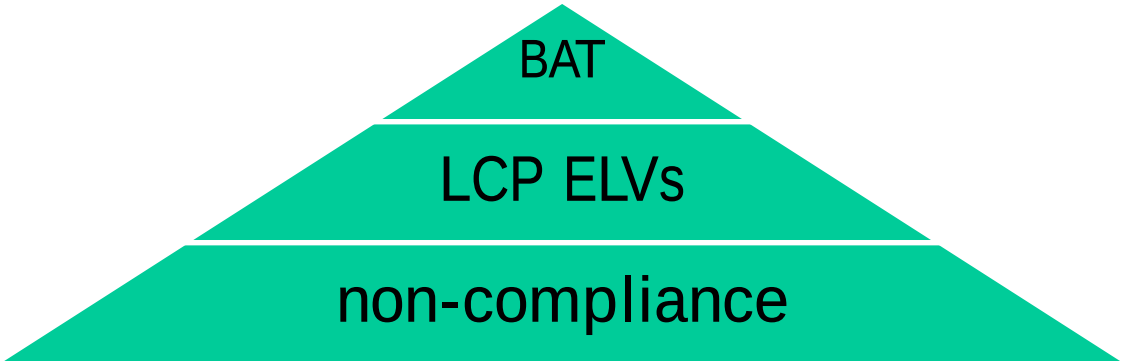
Emission limit values

- SO_2, exisiting plants



Relationship between IPPC/IED and LCP

- IPPC/IED → BAT-based permitting
- LCP → emission limit values and associated monitoring
- LCP should be considered as a „safety net“ for the application of BAT



Elements of flexibility

- Two main ways of implementation:

  1) Art. 4(1) and (2) in connection with Annexes III to VII – compliance with individual ELVs

  2) Art. 4(6) - preparation of a NERP

- Art. 4(4) - Limited lifetime derogation (opt-out)
  - Temporary exemption for meeting the ELVs
  - Limited in time (2008-2015) and in operational hours (20.000)
  - Plant has to shut down at the end of the derogation period → security of supply has to be strictly considered

Elements of flexibility

- Art. 5(1) – Peak load plants

  If a plant only operates a limited amount of hours every year, it may be subject to less stringent ELVs
- Annex III, Part A – Desulphurization rate (for solid fuels)

  Where the ELVs cannot be met due to characteristics of the fuel (coal with high S-content)

Penalties

- Art. 16: "The Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive."
- Alternative ways of compliance have to be considered
- Main reason: non-compliance with the emission limit values, inappropriate monitoring

THANK YOU FOR YOUR ATTENTION!

CONTACT

peter.vajda@energy-community.org

Cross-border Cooperation of Judges

Andrej Kmecl

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

Different aspects of judicial cooperation in environmental cases:

- Practical, related to actual court proceedings (serving of documents, taking evidence)
- General, related to EU policies in the areas of protection of the environment and creation of the European area of justice through cooperation

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

Practical aspect:

- Numerous industrial installations are (or will be) located near international borders
- In such cases, "members of the public concerned" (Art. 25 para. 1 IED and Art. 9 para. 2 Aarhus convention) will likely include foreign nationals

Cross-border Cooperation of Judges

Each Party shall, within the framework of its national legislation, ensure that members of the public concerned (...) have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission (...)

(Art. 9 para. 2 Aarhus convention)

Cross-border Cooperation of Judges

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions (…)

(Art. 25 para. 1 IED)

Cross-border Cooperation of Judges

Within the framework of their bilateral relations, Member States shall ensure that in the cases referred to in paragraph 1, the applications are also made available for an appropriate period of time to the public of the Member State likely to be affected so that it will have the right to comment on them before the competent authority reaches its decision.

The results of any consultations pursuant to paragraphs 1and 2 shall be taken into consideration when the competent authority reaches a decision on the application.

The competent authority shall inform any Member State which has been consulted pursuant to paragraph 1 of the decision reached (...) That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory. (Art. 26 para. 2, 3 and 4 IED)

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

(Art.3 para. 9 Aarhus convention)

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

(Art. 25 para. 4 IED)

Cross-border Cooperation of Judges

Bottom line: in case of transboundary effects, individual rights conferred by the EU law sum up to grant full access to court to residents of other Member states…

… however, on the other hand the EU law provides no procedural tools to facilitate this right.

Among the most important questions in this regard will be service of documents and taking of evidence.

Cross-border Cooperation of Judges

- According to European Judicial Atlas, 12 Member states do not object to direct service of documents (Ireland, Portugal, France, Italy, Luxembourg, the Netherlands, Denmark, Greece, Cyprus, Sweden, Finland and Belgium)
- When serving documents to other Member states, it has to be done according to bilateral agreements or by diplomatic means
- As a rule, taking of evidence will be even more difficult
- Effectiveness of judicial protection may be questionable

Cross-border Cooperation of Judges

- Possible solution: use of mechanisms in place for civil and commercial matters
- Subsidiary use of civil procedure in many national administrative dispute procedures
- Common principles: as a rule, if a document is served or evidence taken correctly according to civil procedure, requirements of administrative dispute procedure will be satisfied as well
- However: EU legal instruments either mention civil or commercial matters only, or even specifically exclude administrative matters

Cross-border Cooperation of Judges

- Service of judicial and extrajudicial documents: Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

- Taking of evidence: Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

Cross-border Cooperation of Judges

- Direct communication between authorities
  - Transmitting agencies
  - Receiving agencies
  - Central authority
  - Use of forms

- Strict deadlines
  - One month (service of documents)
  - 90 days (taking of evidence)

- Limited grounds for refusal

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

Possible obstacles: Scope of the Regulations

- 1. This Regulation shall apply in civil or commercial matters where the court of a Member State, in accordance with the provisions of the law of that State, requests:
- (a) the competent court of another Member State to take evidence; or
- (b) to take evidence directly in another Member State.
- 2. A request shall not be made to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.
- 3. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark.

(Art. 1 Council Regulation (EC) No 1206/2001 of 28 May 2001)

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

- Possible obstacles: Scope of the Regulations

1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (acta iure imperii).

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

3. In this Regulation, the term "Member State" shall mean the Member States with the exception of Denmark.

(Art. 1 Regulation (EC) No 1393/2007 of 13 November 2007)

Cross-border Cooperation of Judges

Possible obstacles: Grounds for refusal (taking of evidence)

- the request does not fall within the scope of the Regulation
- the execution of the request does not fall within the functions of the judiciary;
- the request is incomplete;
- a person of whom a hearing has been requested claims a right to refuse, or a prohibition, from giving evidence;
- a deposit or advance relating to the costs of consulting an expert has not been made.

Cross-border Cooperation of Judges

Possible obstacles: Status of the relevant court

- Expressly designated as transmitting agency
- Among the "users" of a designated transmitting agency
- Not related to the transmitting agency

Cross-border Cooperation of Judges

General aspect of judicial cooperation: judicial associations and networks

- Highly specialised training
- Exchange of information
- Networking

Cross-border Cooperation of Judges

European Judicial Training Network (EJTN)

- http://www.ejtn.net
- Membership: national judicial training organisations
- Scope: Development of various seminars, programmes and curricula "with a genuine European dimension"
- Methods of work: Permanent secretariat, meetings of General Assembly, Working groups and Sub-Working groups

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

EJTN: Actual activities

- Judicial exchange programmes
- Training programmes, including Training the Trainers and Linguistics
- Numerous independent seminars (relevant example: Access to Court in Environmental Matters, Lisbon, October 2013)
- Training guidelines for national training organisations

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

EU Forum of Judges for the Environment (EUFJE)

- http://www.eufje.org
- Membership: open to all EU and EFTA judges, many representatives of supreme administrative jurisdictions and constitutional courts
- Scope: exchanging judicial decisions and sharing experience in the area of training in environmental law
- Methods of work: Annual conferences

ERA
Academy of European Law

European Commission

Cross-border Cooperation of Judges

EUFJE: Actual activities in the past 3 years

- Brussels, 2010 - The Enforcement of European Biodiversity at National Level
- Warsaw, 2011 - The Environmental Protection in the Town and Country Planning or in Land Use in EU Law
- The Hague, 2012 - The Role of EU Law in the National Environmental Courts of the Member States

Cross-border Cooperation of Judges

Association of the European Administrative Judges (AEAJ)

- http://www.aeaj.org
- Membership: Associations of administrative judges of the EU and CE
- Scope: Promoting of professional interests of administrative judges, dissemination and exchange of information
- Methods of work: Meetings of General assembly and Working groups

Cross-border Cooperation of Judges

AEAJ: Actual activities of the WG for environmental law

- Sofia, 2009 - European Nature Protection and Water Protection Law
- Aguilas, 2010 - Access to Court in Environmental Matters - And What Happens Then?
- Vilnius, 2011 - Interim Relief in Environmental Matters
- Rome, 2012 - Mediation and Amicable Settlement Before the Court in Environmental Matters

ERA
Academy of European Law

European Commission

Facts of the case

The operator of a coal-fired power station is intending to adapt the existing installation for co-incineration of waste.

The power station is located in a narrow valley with a long tradition of mining and industrial production, resulting in high baseline pollution. It is equipped with a stack (chimney) of extreme height, dispersing the emissions outside of the valley. The power station's total rated thermal input power is 48 MW, placing it just under the capacity threshold set out in Annex 1 to Industrial Emissions Directive (IED), section 1.1. Therefore, its operation is not subject to this Directive and the national rules used for its transposition, but to a much more relaxed set of national rules, governing smaller installations. The operator is in possession of all the appropriate permits and the plant has been operating without incidents for years.

The capacity of the added line for co-incineration of waste is 2.5 tonnes of non-hazardous (household) waste per hour, also placing it under the IED threshold set out in Annex I, section 5.2.(b). Net calorific value of household waste is up to 2.5 MWh per tonne, adding around 4 MW to the existing thermal input power.

The administrative authority for environmental matters granted an environmental permit for waste co-incineration, based on simplified procedure and relaxed standards governing smaller co-incineration installations not falling under the scope of the IED.

Dispute

The permit is challenged by (a) an NGO, granted a status of "promoting environment protection in public interest" under national law and (b) an owner of a forest located approx. 5 Km from the plant.

The basic claim of both plaintiffs is that the aggregate thermal input power of the installation is up to 52 MW and therefore it constitutes a large combustion plant falling under the scope of the IED. They base this claim on the basic concept of the integrated approach to control of emissions, as set out by the introductory statements to the IED. They maintain that it would be against this concept to artificially break a single process into two separate parts just for the evaluation of its environmental impact. Secondly, they claim that the installation in question is for all practical purposes a single installation in which a single technological process - combustion - takes place. Therefore, the exceptions to the aggregation rules set out in Art. 29 para. 3 IED are irrelevant for this case. They also base their claim on the section 3.1. of the Annex VI, which stipulates use of aggregation rules for evaluation of emissions from co-incineration plants, further proving prevalence of the integrated approach.

Further, the NGO claims that the maximum values for heavy metals and sulphur dioxide as set out by EU air quality standards are occasionally exceeded even now, as are the values they claim to be safe for furans and dioxin. Therefore, pursuant to Art. 18 IED, no further emissions should be allowed at all.

The NGO also claims that data on the nature and quantities of foreseeable emissions (provided by the operator) is false and that the proposed equipment has larger capacities than covered by the application, thus being capable of producing higher levels of emissions, possibly exceeding the limits set out in the IED.

The later two claims are unsubstantiated. The plaintiff acknowledges that, but maintains that such claims can, by their nature, only be substantiated by an expert opinion. The high cost of such an opinion would make access to justice prohibitively expensive. Therefore the plaintiff only cites some circumstantial evidence (mostly health statistics), requesting the court to nominate an expert and cover his costs.

The second plaintiff derives his legal standing from the ownership of a small forest, which is located outside the area of direct influence of the plant. He claims that the height of the stack could, under unfavourable meteorological conditions, cause increase in air pollution on his property. He submits an expert opinion to this effect.

- - -

The administrative authority (the defendant) refers to the exception in Art. 28 (d) IED, which excludes combustion plants which use waste as fuel from the scope of the Chapter III (Special Provisions for Combustion Plants) IED. The plant in question can only exceed the threshold from Annex I section 1.1. IED by using waste as fuel and therefore this exception should be applied at least to this extent. The plant in question may be a single installation, but there are two different activities taking place in it, each governed by a different set of rules in IED, and should therefore be evaluated separately.

The NGO has not presented any substantial evidence to support its claims about the correctness of the data presented by the operator and/or ensuing from public records (about air quality). It should at least present data which would be a cause for serious doubt.

The subject of the evaluation are only the claims listed in the application and not the actual technical capabilities of the installation.

The height of the stack ensures a dispersion of the emissions over a wide area, making the local levels of pollution irrelevant.

As to the second plaintiff, there is no evidence that he or his property would be in any way affected by the plant in question. The expert opinion he presented is in contradiction with publicly available data. Furthermore, it was commissioned by a party and can therefore only be considered as this party's opinion rather than evidence.

Questions

1) Does the plant in question fall under the scope of IED?

☞ *Without prejudice to your actual answer, for the purpose of answering further questions, please assume that the answer to the question 1) is "yes"*

2) Could high baseline pollution (occasionally exceeding the EU environment standards in some regards) outright exclude granting a permit on the basis of Art. 18 IED, regardless of the use of BAT and regardless of the foreseen emission levels?

3) If there are no EU standards set out for certain emissions, must these emissions still be taken into account in evaluation whether no significant pollution will be caused (Art. 11 (c) IED). If yes, how?

4) To which extent must a party substantiate their claims in environmental cases, given highly technical nature of such cases and high costs of expertise, especially regarding the provisions of the IED and Aarhus convention on access to justice?

5) Could the prohibitively high costs of an expert opinion be offset solely by a possibility to apply for legal aid or should the court take further steps with regard to costs to facilitate access to justice?

6) Should the evaluation be based solely on the data submitted by the operator, or should other data (such as public records and data on technological capability of the installation in question) be taken into account?

7) Could a person who proves that he/she could be influenced by the emissions of the installation in question under exceptional circumstances, be considered a member of the public concerned?

Legal Context

There are no national legal provisions included in this overview. Please use your own national provisions or an aggregation thereof. If there are substantial differences among the national provisions of the group members, please indicate them in the report and - where possible - offer alternative solutions.

IED, introductory statements (3), (11), (12), (28), (29)

IED, Art. 3, para. (3) - definition of "installation"

IED, Art. 3, para. (6) - "environmental standards"

IED, Art. 3, para. (17) - "the public concerned"

IED, Art. 3, para. (24) - "fuel"

IED, Art. 3, para. (25) - "combustion plant"

IED, Art. 3, para. (41) - "waste co-incineration plant"

IED, Art. 3, para. (42) - "nominal capacity"

IED, Art. 11, subpara. (c)

IED, Art. 12, para. (1) (d) and (f)

IED, Art. 18

IED, Art.23, para. (1), (2) and (3)

IED, Art. 25, para. (1)

IED, Art. 28 (j)

IED, Art. 29, para. (3)

IED, Art. 31, para. (1)

IED, Annex I, section 1.1.

IED, Annex VI, PART 4, section 3.1.

Speaker's Notes

Most of the questions leave at least some possibility for different answers open, in order to facilitate study and discussion. Therefore, following are not as much correct or final answers, as some basic hints for the discussion.

Question 1: The question is based on a possible inconsistency of the IED's text and has no clear answer. In the context of the workshop, it is designed to encourage the participants to explore in detail some of the IED's characteristic solutions regarding combustion and co-incineration plants. In an actual case, it could lead to a reference for a preliminary ruling.

Question 2: Technically, the answer is "no". In such a case, Art. 18 only stipulates additional measures to be included in the permit. However, the refusal to issue a permit could be based on other, be it national or European legal instruments.

Question 3: This is a common argument in environmental cases. Actually, the question is much wider: how to provide protection of the environment against known pollutants if legislation is lagging (not providing up-to-date standards)? However, in the context of the IED it is difficult to see more than a statement of a basic principle in the provision of the Art. 11 (c), useful for interpretation of further provisions, but not providing direct legal basis for a decision.

Question 4: In most jurisdictions and in most court procedures, the parties must support their claims by facts and evidence. However, in environmental cases this could be very difficult due to the technical nature of the argument and high costs of expertise. The purpose of this question is to discuss whether (and if yes, how and to which degree) the court should take into consideration claims which are substantiated to a less stringent standard in order not to hinder access to justice set out by recital 27 and Art. 25 of the IED.

Question 5: Again, the (possible) high costs in environmental matters could defeat the purpose of legal aid systems in various MSs. Some of these systems are based solely on the social status of the claimant and some rely heavily on the principle of the reasonable prospect of success. These criteria could prove inadequate in environmental cases, as the costs are likely to exceed the financial capability of claimants who are otherwise above the income threshold for legal aid and the reasonable prospect of success could be difficult to demonstrate without a costly expertise. The purpose of the question is to discuss how to ensure access to court in such cases, especially in the light of the CJEU judgment C-260/11.

Question 6: According to Art. 12 IED, the decision is - in principle - based on the data provided by the applicant. However, the authorities in some MSs are required to apply investigative principle to various degrees and the purpose of this question is to facilitate discussion of these different approaches.

Question 7: Again, a question which aims to highlight different possible approaches, this time to definition of "public concerned" or "legal interest" in various jurisdictions.

Jerzy Jendrośka

Public participation in IPPC under Industrial Emissions Directive

ERA
Academy of European Law

European Commission

Content

- Roots and historical development
- Aarhus Convention and its status in EU law
- „Aarhus" issues in IED – overview
- Public and public concerned
- Access to information
- Public participation
- Access to justice
- Issues of concern

Roots and historical development

- German medieval local regulations
  - noxious and strenuous activities could not be carried out without the consent of the neighbours
- Prussian Industrial Code 1845
  - public participation in granting industrial licenses for potentially harmful activities
- Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants
  - applications for authorization and the decisions of the competent authorities are made available to the public concerned in accordance with procedures provided for in the national law
- Directive 96/61/EC IPPC
  - napplications for permits for new installations or for substantial changes are made available for an appropriate period of time to the public, to enable it to comment on them before the competent authority reaches its decision. That decision, including at least a copy of the permit, and any subsequent updates, must be made available to the public.
- Aarhus Convention -1998
- Public Participation Directive 2003/36 amends IPPC Directive to implement Aarhus Convention

Aarhus Convention

- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
  - 1998 - adopted and signed in Aarhus (Denmark)
  - 2001 - entry into force
- Aarhus Convention as a benchmark
  - Draft Recommendations on Public Participation in Decision-making in Environmental Matters (Draft 2013)
- Aarhus Convention in EU
  - part of the acquis
  - Member States implement Aarhus via EU law
- Role of the Aarhus Compliance Committee (ACC)
  - nine independent members having „recognised competence"
  - elected to serve in personal capacity
  - regional balance

ERA
Academy of European Law

European Commission

Legal force

- Findings and recommendations of CC
  - Findings
    - compliance or non-compliance
  - Recommendations
    - steps to be taken Party concerned
    - steps to be taken by MOP
- Adoption by MOP
  - declaration of non-compliance
  - caution (one issued -on Ukraine)
  - suspension of rights and priviliges

Direct effect of Aarhus Convention

- Direct effect at EU level
  - Case C-240/09 Lesochranarske: art.9.3 has no direct effect but standard test of direct effect applicable
- Direct effect in Member States
  - no direct effect because of article 3.1 („Each Party shall take the necesary legislative, regulatory and other measures..") – verdicts in Czech Republic and Poland
  - each provision separately judged (ie. paragraphs 1,2,3 and 7 of Art.6 produce direct effect according to Conseil d'Etat in France)

„Aarhus" issues in IED - overview

- Recital 27
- Definitions of the public and public concerned
- Access to information and public participation in the permit procedure (IPPC) – art.24
- Access to justice (IPPC) – art.25
- Public participation and information for incineration plants – art. 55
- Specific provisions on
  - exchange of information and co-operation with NGOs
  - public disclosure of certain information
- Annex IV on the procedure for public participation in decision-making

Recital 27

- In accordance with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters effective public participation in decision-making is **necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions**, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned **should have access to justice** in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

The public and public concerned - definition

- (16) ‘the public’ means one or more natural or legal persons and, in accordance with national law or practice, their associations, organisations or groups;
  - definition identical as in Aarhus
- 917)‘the public concerned’ means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest
  - definition slightly modified to make it IPPC permit specific

The public and public concerned - non-discrimination clause

- Art. 3.9
  - Within .. this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

The public and public concerned – foreign public

- No obligation to translate the notification and other documents into English – (ACC/51/Romania)
- Draft Recommendations on Public Participation
  - The environmental impacts of activities subject to the Convention may occur across national borders. In accordance with the requirement in article 3, para. 9, of the Convention, the public must have the possibility to participate in decision-making under the Convention without discrimination as to citizenship, nationality or domicile..
  - To this end:
    - The legal framework should not contain anything that discriminates against the public from other countries participating in decision-making in the country of origin that may affect them;
    - Steps should be taken to put in place arrangements with other countries, in particular with neighbouring or downstream countries or those with shared natural resources (whether within existing agreements on transboundary cooperation or on transboundary impact assesment or otherwise) to facilitate the reciprocal participation of those countries' public in decision-making under the Convention that may affect them.

ERA Academy of European Law

European Commission

Access to information – art. 24 IED

- Obligation to „make available to the public”:
  - information regarding the permit, its conditions etc
  - Information regarding
    - Post-closure measures
    - Results of monitoring
- Obligation to make certain information available via Internet
- Subject to restrictions in Art.4.1 and 2 of Directive 2003/4 on access to environmental information, including
  - Restrictive interpretation of grounds for refusal
  - Obligation of weighing interests for– and against- the disclosure
  - Exemption to exemptions – no refusal in case of information on emissions

Access to information – issues of concern

- Clear requirement to make information available via Internet (art.24.2 a), b) and f IED)
- in the light of art. 5.3 d) Aarhus as implemented by art 7 .2 f) of Directive 2003/4/EC - why not also c),d)and e)?
- what it means via internet - through „electronic data bases" or „upon (electronic) request ??
- Art 19 IED - information about development in BAT
  - „make available" - language to address „passive acces" (ie upon request)
  - to „public concerned"
- limatation of general right under Directive 2003/4/EC which gives acces to „the public"!!!

Public participation – general rules and steps in the procedure

- General rules
  - Early public participation (art.6.4)
  - Reasonable time-frames (art.6.3)
- Steps in the procedure
  - Notification –art 6.2
  - Access to relevant information – art.6.6
  - Possibility to submit comments – art.6.7
  - Due account taken of public comments – art.6.8
  - Decision taken notified and accesible to the public- art.6.9

Early public participation

- Aarhus Convention (Art.6.4)
  - Each Party shall provide for early public participation,
  - when all options are open
  - and effective public participation can take place
- IED –art. 24
  - 1. Member States shall ensure that the public concerned aregiven early and effective opportunities to participate in the following procedure ..
- Basic issues
  - Does „early…when all options are open”
    - relates to sequence of decisions (Delena Wells case)?
    - relates to particular decision (scoping in EIA)?
    - both?
  - Can public participation after construction is finished be considered „early” (ACC/C/17 – EC case)?

ERA
Academy of European Law

European Commission

Reasonable time-frames

- Aarhus Convention (Art.6.3)
  - The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making"
- IED (annex IV.5)
  - Reasonable time-frames for the different phases shall be provided, allowing sufficient time to inform the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to this Annex.

Time frames – issues for consideration

- Phases
  - Notification
  - Inspection of relevant documents
  - Submission of comments
  - Consideration of comments (ACC/C/3 Ukraine)
- Fixed vs diversified time-frames(CCC/C/16 Lithuania)
- Timing
  - traditional holiday season (ACC/C/24 Spain)

Time frames - examples

- Not reasonable time-frames
  - „The time-frame of only ten working days, set out in the Lithuanian EIA Law, for getting acquainted with the documentation, including EIA report, and for preparing to participate in the decision-making process concerning a major landfill does not meet the requirement of reasonable time-frames" (Case CCC/C/16 Lithuania)
- Reasonable time-frames
  - „the announcement of the public inquiry...provided a period of approximately 6 weeks for the public to inspect the documents and prepare itself for the public inquiry ...the public inquiry ...provided 45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity... The ... provision of approximately 6 weeks for the public concerned to exercise its rights under article 6, paragraph 6, and approximately the same time relating to the requirements of article 6, paragraph 7.. meet the requirements of these provisions in connection with article 6, paragraph 3, of the Convention"(Case CCC/C/22 France)

ERA
Academy of European Law

European Commission

Notification – basic issues

- Aarhus (art.6.2)
  - Public notice or individually (case C-15 Romania)
  - Manner:
    - Adequate
    - Timely
    - Effective
- IED
  - Timely („sufficient time to inform the public and for the public.. to prepare and participate effectively" – compare with the previous version of EIA Directive!)
  - Adequate („nature of possible decisions")
  - Effective („bill posting…or publication in local newspapers")
  - still no clear indication that the public notice should be done in „adequate, timely and effective manner" as required in Art.6.2 Aarhus (see ACC/C/17 EC)

ERA
Academy of European Law

European Commission

„Adequate" notice

- „it has been clearly shown that what the public concerned was informed about were possibilities to participate in a decision-making process concerning "development possibilities of waste management in the Vilnius region" rather than a process concerning a major landfill to be established in their neighbourhood. Such inaccurate notification cannot be considered as "adequate" and properly describing "the nature of possible decisions" as required by the Convention." (Case CCC/C/16 Lithuania)

„Effective" notice

- „The requirement for the public to be informed in an "effective manner" means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned would have a reasonable chance to learn about proposed activities and their possibilities to participate" (Case CCC/C/16 Lithuania)
- „Therefore, if the chosen way of informing the public about possibilities to participate in the EIA procedure is via publishing information in local press, much more effective would be publishing a notification in a popular daily local newspaper rather than in a weekly official journal, and if all local newspapers are issued only on a weekly basis, the requirement of being "effective" established by the Convention would be met by choosing rather the one with the circulation of 1,500 copies rather than the one with a circulation of 500 copies. " (Case CCC/C/16 Lithuania)

Access to relevant information

- Aarhus Convention 9(Art.6.6)
  - Free of charge
  - All information relevant to decision-making
  - As soon as available
  - Exemption from general rules on access to information under art.4
  - Relation to art 6.2
- IED – convoluted scheme in Annex IV
  - „information other than that referred to..(point 2 referring to point 1)

Possibility to submit comments –

- Art. 6.7 of Aarhus„
- 7. Procedures for public participation shall allow **the public** to submit…any comments"

- Annex IV .3 IED
  - „3. The **public concerned** shall be entitled to express comments and opinions to the competent authoority before a decision is taken"

- Possibility to submit comments -two equal methods
  - In writing
  - In public inquiry (hearing)
- Any comments - no need to be motivated (ACC/C/16 Lithuania)

Due account– art.6.8

- Due account must be taken of public comments
  - obligation to read and consider seriously
  - but not always to accept all comments
- Any comments vs „reasoned or motivated comments”
- Sufficient time for authorities to consider comments ((ACC/C/3 Ukraine)
- Annex IV IED
- 4. The results of the consultations held pursuant to this Annex must be taken into due account in the taking of a decision.

Publicising the decision- art.6.9

- Requirement
  - to notify the public promptly (ACC/C/8 Armenia)
    - about the decision
    - where it can be made available
  - to make it accesible to the public (ACC/C/3 Ukraine)
    - publicly accesible registers
    - publicly accessible records of decisions
- Together with a statement on:
  - reasons
  - considerations

Art.24.2 IED vs art.6.9 Aarhus

- N
  - „make available” (passive) vs „ inform” (active)
  - no „promptly”
  - no „in acordance with appropriate procedures” (as it was in IPPC)

Public participation – in permitting (art 6 Aarhus) - scope of application

- Annex I revised
  - activities added (for example 6.9-6.11 Annex I IED)
  - activities more precisely elaborated (for example point 5 Annex I IED)
- Needed thorough analysis of legal consequences for the scope of application

Public participation in permitting (art 6 Aarhus) - incinerations

- Special legal regime for waste incineration
  - article 55 IED -
    - simplified public participation
    - applies to all
  - relation to art 24, 25 and Annex IV
    - which is meant to apply only to those in Annex
- no provision from Directive 2000/76/EC
  - „without prejudice …to Directive 96/61/EC"
  - to cover standard IPPC regime (now art.24,25 and Annex IV IED)

Public participation in permitting (art 6 Aarhus) - reconsideration/updating permits

- M
- Does art.24.1 d) covers only updating or also reconsideration?
- Public participation required only in case of Article 21.5 a) IED
- Art.6.10 Aaarhus require pp in rec/up „where appropriate"
- Why situations in art.21.5 b) and c) are not „appropriate"?

Public participation in plans and programs (art 7 Aarhus)

- Art 32 IED - Transitional National Plan
- Art.23 IED – environmental inspection plan
  - plans „relating to the environment"
  - therefore subject to Art.7 Aarhus
- No requirement for public participation envisaged in IED

Access to justice (art.9 Aarhus)

- Art.9.2 (relation to Art.6 and possibly other provisions) :
  - redress in case of abusing right to participate and/or
  - basis to challenge substantive and procedural legality
- Problems in legislations based on „protection of rights" with addressing
  - procedural legality (ACC/31/ Germany)
  - substantive legality (ACC/50/Czech Republic)
  - general environmental issues (ACC/48/ Austria)
- In IED (art.25) still no injunctive relief as envisaged in Art.9.4 Aarhus
  - despite it seems „appropriate"
  - despite change of the Treaty (under Lisbon Treaty EU has now clear competence in access to justice)
- Sufficient interest

ERA
Academy of European Law

European Commission

Conclusions

- There are serious flaws in IED
  - most „old" problems inherited from IPPC
  - some „new" problems added
- Problems can be rectified by
  - proper transposition
  - proper interpretation
- Aarhus Convention is also part of acquis
- IED should be interpreted in the light of Aarhus when transposed by and implemented in the Member States

Access to e-EU Law

By
Monika Krivickaite, ERA

„Co-operation with national judges in environmental matters“

Access to e-EU Law

EU law on the internet:

- Primary law
- Secondary law
- Case law of the EU courts
- Case law of national courts
- e-Justice portal
- DG Environment website
- Project „Cooperation with national judges in the field of environmental law“

Access to e-EU Law
Primary law: the Treaties

- EUR-Lex: http://eur-lex.europa.eu/en/treaties/index.htm
- Treaty of Lisbon: consolidated version:
  - Treaty on European Union (TEU)
  - Treaty on the Functioning of the European Union (TFEU)
- PDF files
- Renumbering of articles: Tables of equivalences

ERA
Academy of European Law

European Commission

EUR-Lex Access to European Union law

English (en)

Search

Browse

OFFICIAL JOURNAL

SIMPLE SEARCH
by word
by document number
by date
by OJ reference
by CELEX number
more options...

ADVANCED SEARCH

COLLECTIONS
Treaties
International agreements
Legislation in force
Consolidated legislation
Preparatory acts
Case-law
Parliamentary questions

PRACTITIONER'S CORNER
Budget of the European Union
ECICS
The institutions' registers
TARIC
EU Pesticides Database
EU legislation on statistics

About EU law
Summaries of EU Legislation
The ABC of European Union law
Legislative drafting
Statistics on EU legislation
Types of documents in EUR-Lex

Last updated: 15/05/2013

largement 2013: Croatia

preparation for the accession of the Republic of Croatia to the European Union, secondary legislation in force at the date of accession is being translated into Croatian and will gradually be published in the Special edition of the Official Journal of the European Union. en hr

Authentic electronic Official Journal

The electronic Official Journal of the European Union will be authentic and have legal effect from 1 July 2013, thanks to a new Council Regulation (No 216/2013 of 7 March 2013). Via EUR-Lex you will be able to access the OJ and verify its authenticity.

Coming soon

Discover the new EUR-Lex:

- Major EUR-Lex update
  Stability of links and consequences for applications based on the site. Please contact us if you use our data for automatic processing.
- EUR-Lex will soon change; to stay informed, leave us your contact details.

Recently published

- **14/05/2013**: 2013/C 135/01: Report on budgetary and financial management for 2012 pdf
- **09/05/2013**: Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions (Text with EEA relevance) pdf
- **09/05/2013**: Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services (Text with EEA relevance) pdf
- **26/04/2013**: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers html pdf

Official Journal

Latest issues

L135
C142

My profile

User ID:

Password:

Connection

Free registration

Follow us on

Official Journal

of the European Union

ISSN 1725-2423

C 83

Volume 53

30 March 2010

Complete edition

English edition

Information and Notices

EN

Access to e-EU Law
Secondary law

- EUR-Lex: Official Journal
  - Browse by publication date or reference number
  - L = Legislation
  - C = Information and notices

Search by Official Journal publication reference

Publication date

Year (mandatory)

2010

Month

Day

Official Journal reference

OJ series

All

OJ number

Page number

Search

Guidelines for good results

- The year field takes four digits; the month and day fields take two.
  Example: Year 2007 Month 08 Day 17
- Always enter the year. Month and day fields are optional.
- To get the annexes to the OJ C series, enter A or E after the OJ number.
  Example: select the C series, then enter 191A to get an OJ with the reference C 191 A.

About the Official Journal

- The Official Journal (OJ), published daily in 23 languages, consists of the L series (legislation) and the C series (resolutions, recommendations, guidelines and opinions/information/preparatory acts/notices/announcements). The documents included in the C series are partly published only electronically.
- From 1952 to 1957 the Official Journal was published as a single series (A). In April of 1958 the A series was replaced by the P series. The P series existed from 1958 until 1967. The L and C series were introduced in 1968.
- The Supplement S to the OJ (calls for tenders) is published in the TED database.

Access to e-EU Law
Secondary law

- EUR-Lex: Simple Search
  - Allows for searches using basic search criteria: reference, keyword etc.
  - Provides document in different formats (HTML, PDF, DOC)
  - Bibliographic notice cross-references other relevant documents

This site is a part of Europa

About EUR-Lex |

EUR-Lex Access to European Union law

EUROPA > EUR-Lex Home > Simple search > New search

New search

General search

- Search terms
- Date or time span
- Author
- Classification headings
- Keywords (Eurovoc)

Search by file category

- Treaties
- Legislation
- Preparatory acts
- EU case-law
- National case-law
- Parliamentary questions

Search by document number

- Natural number
- CELEX number
- Consolidated text

Search by publication reference

- Official Journal
- European Court Reports

Previous searches

- Search history
- Your saved searches
- Your files

ERA Academy of European Law

European Commission

Search

Query 7 - Title: Industrial Emissions -
31 Hit(s) Refine

New search

Search history

Search results

Complementary data: Dates Languages and formats available Classifications
Display results: ordered by date GO

Page **1** of **4** - > >>

Other relevant documents

COM/2013/028

/* COM/2

REPORT F EAN PARLIAMENT AND THE COUNCIL Report from the Commission on the reviews undertaken under Article 30(9) and Article 73 of Directive 2010/75/E emissions from intensive livestock rearing and combustion plants

Bibliographic notice
pdf doc

32013D0163

2013/163/EU: Commission Implementing Decision of 26 March 2013 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on **industrial emissions** for the production of cement, lime and magnesium oxide (notified under document C(2013) 1728) Text with EEA relevance

OJ L 100, 9.4.2013, p. 1–45 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

Bibliographic notice
Bibliographic notice + Text (bilingual display)
html pdf

32013D0084

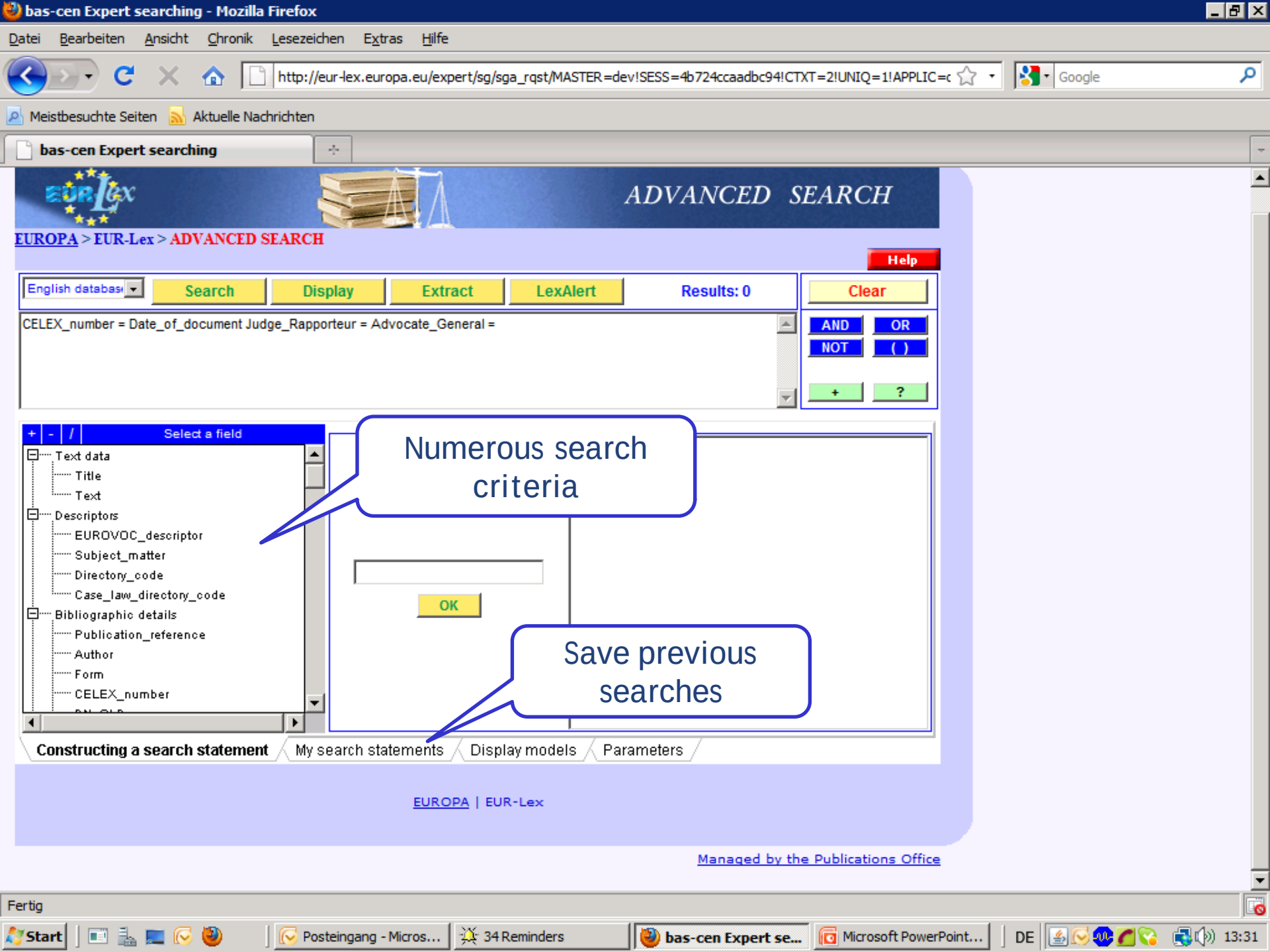
2013/84/EU: Commission Implementing Decision of 11 February 2013 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on **industrial emissions** for the tanning of hides and skins (notified under document C(2013) 618) Text with EEA relevance

OJ L 45, 16.2.2013, p. 13–29 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

Bibliographic notice
Bibliographic notice + Text (bilingual display)
html pdf

EU (environmental) law on the internet
Secondary law

- EUR-Lex: Advanced Search
  - "… developed for the needs of professional users who are familiar with EC law and advanced search techniques"
  - Allows complex searches combining different search criteria: reference, keyword, name (e.g. of judge), timeframe, country …
  - Requires Java


bas-cen Expert searching - Mozilla Firefox
Datei Bearbeiten Ansicht Chronik Lesezeichen Extras Hilfe
http://eur-lex.europa.eu/expert/sg/sga_rqst/MASTER=dev!SESS=4b724ccaadbc94!CTXT=2!UNIQ=1!APPLIC=c
Google
Meistbesuchte Seiten
Aktuelle Nachrichten
bas-cen Expert searching
ADVANCED SEARCH
EUROPA > EUR-Lex > ADVANCED SEARCH
Help
English databas
Search
Display
Extract
LexAlert
Results: 0
Clear
CELEX_number = Date_of_document Judge_Rapporteur = Advocate_General =
AND
OR
NOT
( )
+
?
Select a field
Text data
Title
Text
Descriptors
EUROVOC_descriptor
Subject_matter
Directory_code
Case_law_directory_code
Bibliographic details
Publication_reference
Author
Form
CELEX_number
Numerous search criteria
OK
Save previous searches
Constructing a search statement
My search statements
Display models
Parameters
EUROPA | EUR-Lex
Managed by the Publications Office
Fertig
Start
Posteingang - Micros...
34 Reminders
bas-cen Expert se...
Microsoft PowerPoint...
DE
13:31

EU (environmental) law on the internet
Secondary law

- iEURLex European Union Journal: iPhone app

Access to e-EU Law
Secondary law

- Summaries of EU legislation: http://europa.eu/legislation_summaries/
  - Detailed content only available in English, French, German, Italian and Spanish
  - Contains summary of legislation on specific policy issues and links to relevant legislation

"Summaries of EU legislation": everything you want to know about European legislation!

The "Summaries of EU legislation" website presents the main aspects of European Union (EU) legislation in a concise, easy-to-read and unbiased way. It provides approximately 3 000 summaries of European legislation, divided into 32 subject areas corresponding to the activities of the European Union. For further information...

What's new?

Environment: Reduction of pollutant emissions from light vehicles [29/03/2013]
Public health: Exposure to electromagnetic fields [29/03/2013]
Agriculture: Farm Accountancy Data Network [28/03/2013]

For further information...

Tutorial | By default | Open all | Close all

- Agriculture
- Economic and monetary affairs
- External trade
- Internal market
- Audiovisual and media
- Education, training, youth, sport
- Fight against fraud
- Justice, freedom and security
- Budget
- Employment and social policy
- Food safety
- Maritime Affairs And Fisheries
- Competition
- Energy
- Foreign and security policy
- Public Health
- Consumers
- Enlargement
- Humanitarian aid
- Regional policy
- Culture
- Enterprise
- Human rights
- Research and innovation
- Customs
- Environment
- Information society
- Taxation

Access to e-EU Law
Case law of the EU courts

- **European Court of Justice:** http://curia.europa.eu/
  - Simple search procedure: reference, date, party name, keyword
  - Provides all relevant documents: application/reference, summary, Advocate General's opinion, judgment

The Institution
Court of Justice
General Court
Civil Service Tribunal
Case-law
Press and Media
Library and documentation

Search for a case

CASE-LAW

Court ☑ All ☑ Court of Justice ☑ General Court ☑ Civil Service Tribunal

Case no (e.g.: C-408/01; 408/01)

Names of the parties

Dates from to (dd/mm/yyyy)

Search

Most recent judgments and opinions

Court of Justice

General Court

Civil Service Tribunal

e-Curia

Calendar

May 2013

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
17			1	2	3	4	5
18	6	7	8	9	10	11	12
19	13	14	15	16	17	18	19
20	20	21	22	23	24	25	26
21	27	28	29	30	31		

Press Releases

Features

Annual Report 2012

Practical information

- Jobs and Traineeships
- Invitations to tender
- Visits
- Library
- Access map
- Whoiswho

List of results

Start printing

Note of criteria selected:
Case number = C-26/62

Modify the search

List of results by case | List of documents

Search result: 1 case(s)

1/1 C-26/62 - Van Gend en Loos v Administratie der Belastingen [Case closed]

Main proceedings

Judgment of the Court of 5 February 1963.
NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.
Reference for a preliminary ruling: Tariefcommissie - Netherlands.
Case 26-62.

Reports of Cases
1963 00003
Dutch 1963/00003 German 1963/00003 Italian 1963/00003 English 1963/00001 Danish 1954-1964/00375 Greek 1954-1964/00863 Portuguese 1962-1964/00205 Spanish 1961-1963/00333 Swedish I/00161 Finnish I/00161

Links to the texts

	Curia	EUR-Lex
Judgment		
Opinion		

EU (environmental) law on the internet
Case law of national courts

- EUR-Lex national case law: http://eur-lex.europa.eu/RECH_jurisprudence-nat.do
- Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union: *Dec.Nat* and *JuriFast* http://www.aca-europe.eu/en/jurisprudence/jurisprudence_en.html
- Network of the Presidents of the Supreme Judicial Courts of the European Union: Common Portal of National Case Law : http://www.reseau-presidents.eu/rpcsjue/
- Caselex: http://www.caselex.com/

ERA
Academy of European Law

European Commission

EU (environmental) law on the internet
EUR-Lex national case law

- A new search 'national case-law' has been added to the EUR-Lex simple search screen. This new functionality allows references to **national case-law** concerning EU law, mainly of EU Member States, to be found.
- **How do I use this search?** Before defining your search options, select one, several or all national courts. Then, choose if you want a list of all cases (no further search options) or if you want to refine your search by terms, date, instruments cited, references for preliminary ruling or subject matter.
- **Which cases will I find and in which language?** You will retrieve references to national case-law regarding EU law from the EU Member States, and also from third countries (Canada, Liechtenstein, Norway and Switzerland), from the EFTA Court and from the European Court of Human Rights. The title of the case is only available in the original language of the judgment; keywords are in French and English. Bibliographic information and search functionalities are available in all EU official languages.

ERA
Academy of European Law

European Commission

Search in national case law

Options

- All national courts
- 1 or more national courts
  - Bulgaria
  - Belgium
  - Czech Republic
  - Denmark
  - Germany
  - Estonia
  - Greece
  - Spain
  - France
  - Ireland
  - Italy
  - Cyprus
  - Latvia
  - Lithuania
  - Luxembourg
  - Hungary
  - Malta
  - Netherlands
  - Austria
  - Poland
  - Portugal
  - Romania
  - Slovenia
  - Slovakia
  - Finland
  - Sweden
  - United Kingdom
  - Other*

Further search options

- No further options
- Search terms
- Date or time span
- Instruments cited
- References for preliminary ruling
- Subject matter

Search

Guidelines for good results

- Select a national court system (all, 1 or more) and a search option. Then click the Search button.
- "Other" includes international and other non EU courts.

Created in collaboration with the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.
Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

DEC.NAT - NATIONAL DECISIONS

Search

This is a full text search.
The beginning of a word is enough, there must be a space between two words and unnecessary words can be omitted. Example : "origin goods" for "origin of the goods".

Date of the decision

until:

For an interval of dates click "until"

Name of parties or registration number

Examples : Smith, Smith John, X ZR 134/00

Title (name of the court, type of decision, ...)

Examples : Cour de cassation, Raad van State, Landesarbeitsgericht

National provision

Examples : Loi 29/07/1991, Decreto legge 14/09/1993, Nomos 3614/1928

State in which the decision has been given

Click in the list

Language of the original decision

Click in the list

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.
Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

JURIFAST - FAST INFORMATION SYSTEM

Home page

Last decisions transmitted

941 documents

next page →

	State and jurisdiction	Date
Detail	Czech Republic - Nejvyšší soud	01/09/2009
29/10/2010 07:56	**Subject**	
	Declaration of the nullity of a loan agreement – assumption of obligation – unjust enrichment – Second Directive	
Detail	Czech Republic - Nejvyšší soud	17/02/2005
29/10/2010 07:48	**Subject**	
	Determination of local jurisdiction – termination of maintenance obligation – Council Regulation (EC) No 1347/2000	
Detail	Czech Republic - Nejvyšší soud	27/11/2008

Search

National decision

☑ Preliminary question
☑ Without preliminary reference
State
Date
☐ until :
Words of the subject

European Union law

Type of provision
Year No Article
Words of the title of the provision

NETWORK OF THE PRESIDENTS OF THE SUPREME JUDICIAL COURTS OF THE EUROPEAN UNION

search page | national case law databases | help

cs da de el en es et fi fr hr hu it lt mt nl no pt ro sk sl sv

login

username:

password:

Submit

(forgot your password? Contact : amelie.bidarddelanoe@rpcsjue.org)

Search page

About the Portal

The meta-search engine of National Case Law was created by the Network of the Presidents of the European Supreme Courts. It has been released in April 2007 and allows to simultaneously query several search engines.

Search Instructions

- Make sure you are entering your search words with the **right language**.
- The language can be changed at the bottom of the page.
- **Use the quotes**, the meta-search engine is still in development stage.
- So every term has to be entered between quotes e.g. "torture" and "kidnapping".
- Research Assistance

Search

The current search language is English

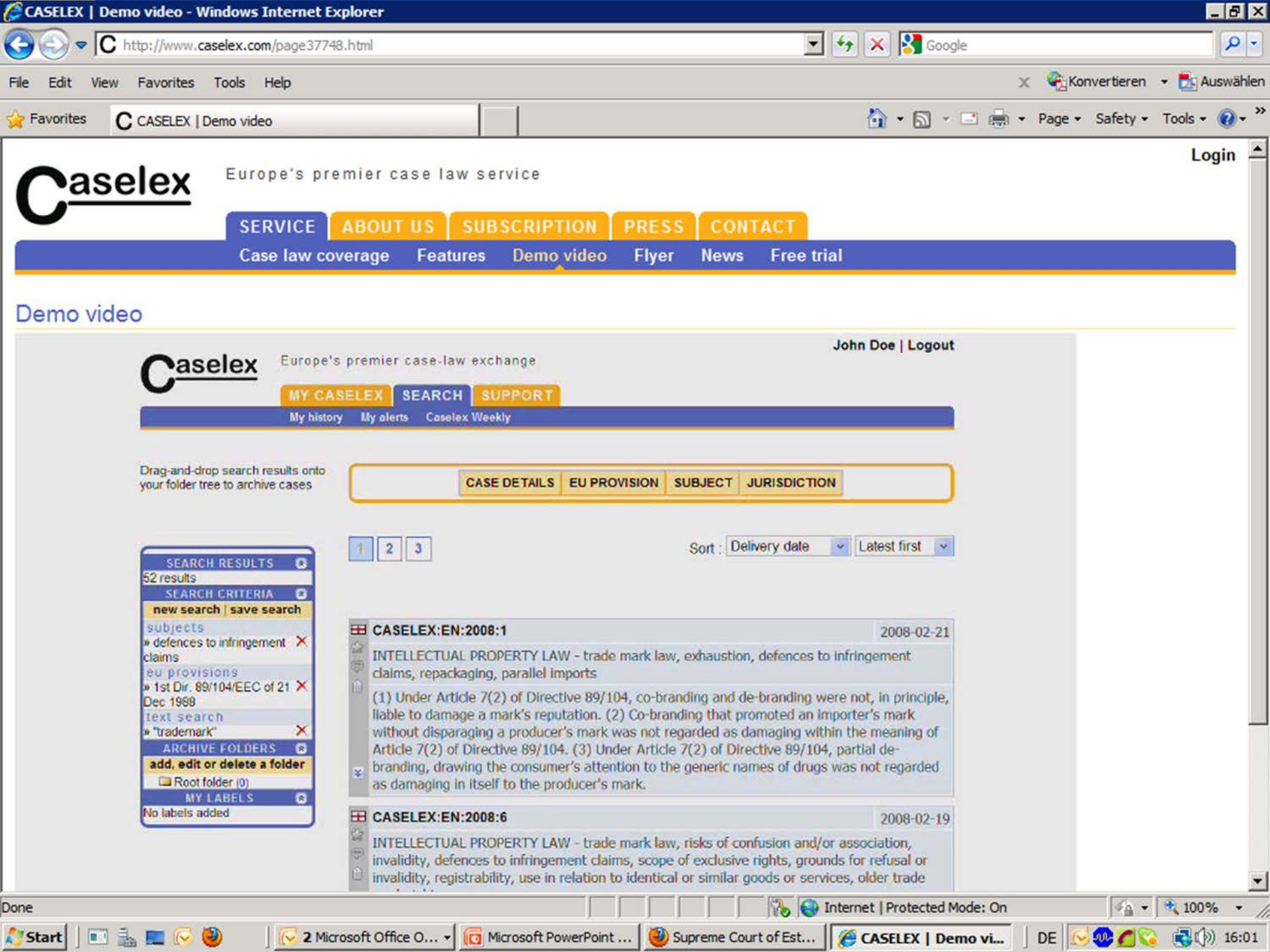
From day month year

To day month year

Selected target search engines

modify the selection...

Unselected target search engines


CASELEX | Demo video - Windows Internet Explorer
http://www.caselex.com/page37748.html
Google
File Edit View Favorites Tools Help
Konvertieren Auswählen
Favorites
CASELEX | Demo video
Page Safety Tools
Login
Caselex
Europe's premier case law service
SERVICE ABOUT US SUBSCRIPTION PRESS CONTACT
Case law coverage Features Demo video Flyer News Free trial
Demo video
John Doe | Logout
Caselex
Europe's premier case-law exchange
MY CASELEX SEARCH SUPPORT
My history My alerts Caselex Weekly
Drag-and-drop search results onto your folder tree to archive cases
CASE DETAILS EU PROVISION SUBJECT JURISDICTION
1 2 3
Sort : Delivery date Latest first
SEARCH RESULTS
52 results
SEARCH CRITERIA
new search | save search
subjects
» defences to infringement claims
eu provisions
» 1st Dir. 89/104/EEC of 21 Dec 1988
text search
» "trademark"
ARCHIVE FOLDERS
add, edit or delete a folder
Root folder (0)
MY LABELS
No labels added
CASELEX:EN:2008:1
2008-02-21
INTELLECTUAL PROPERTY LAW - trade mark law, exhaustion, defences to infringement claims, repackaging, parallel imports
(1) Under Article 7(2) of Directive 89/104, co-branding and de-branding were not, in principle, liable to damage a mark's reputation. (2) Co-branding that promoted an importer's mark without disparaging a producer's mark was not regarded as damaging within the meaning of Article 7(2) of Directive 89/104. (3) Under Article 7(2) of Directive 89/104, partial de-branding, drawing the consumer's attention to the generic names of drugs was not regarded as damaging in itself to the producer's mark.
CASELEX:EN:2008:6
2008-02-19
INTELLECTUAL PROPERTY LAW - trade mark law, risks of confusion and/or association, invalidity, defences to infringement claims, scope of exclusive rights, grounds for refusal or invalidity, registrability, use in relation to identical or similar goods or services, older trade
Done
Internet | Protected Mode: On
100%
Start
2 Microsoft Office O...
Microsoft PowerPoint ...
Supreme Court of Est...
CASELEX | Demo vi...
DE
16:01

Access to e-EU Law
EU e-Justice portal

- https://e-justice.europa.eu/home.do
- Launched in July 2010
- Gathers in one place practical information, links and references about EU justice for:
  - Citizens
  - Businesses
  - Legal practitioners
  - Judiciary

Access to e-EU Law
DG Environment

- Website of the Environment Directorate-General: http://ec.europa.eu/dgs/environment/
- **Who's who** – The Commissioner, DG Environment organogram
- **Policies** – air, chemicals, land use, nature and biodiversity, soil, waste etc.
- **Integration** – "making sure that environmental concerns are fully considered in the decisions and activities of other sectors": Agriculture, Cohesion Policy, Energy, Fisheries etc.
- **Law** - Implementation of Community environmental legislation, Crime, Liability, Aarhus Convention
- **Resources** - Links, Legislation, Publications, Newsletters, Speeches, Statistics, etc.

Access to e-EU Law

Project „Cooperation with national judges in the field of environmental law“

- **DG Environment->**Law->Implementation->Co-operation with judges:
  http://ec.europa.eu/environment/legal/law/judges.htm

- **ERA->**Our Programme->Seminar Projects->Cooperation with national judges in the field of environmental law
  www.era.int/judges&environmental_law
  - Information about the project,
  - Upcoming workshops,
  - E-learning
  - Background documentations for the workshops, etc.

ERA
Academy of European Law

Upcoming workshops

European Law on Industrial Emissions
3-5 June 2013

National Office for the Judiciary, Hungarian Judicial Academy
6 Tóth Lırincutca,1122 Budapest
Language: English
Seminar Number: 413DV120
Conference programme
Background documentation

European Law on Industrial Emissions
11-13 September 2013

Academy of European Law
Trier, Metzer Allee 4
Language: English
Seminar Number: 413DV121
Conference programme

Terms and conditions of participation

CONTACT

Monika Krivickaite
Course Director - Public Law
phone: +49 (0)651 937 37 410
fax: +49 (0)651 937 37 773

Thank you for your attention!

Monika Krivickaite (mkrivickaite@era.int)