

EU Directives

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Treaties of the European Union

There are two principal treaties on which the EU is based

- Treaty on European Union (Maastricht-1993)
- Treaty on the Functioning of the European Union (Rome treaty-1958)
- These treaties have been altered by amending treaties at least once a decade since they came into force , the latest being the Lisbon treaty –came into force in 2009

Art. 1(3) TEU:

'The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union [...]. Those two Treaties shall have the same legal value.'

Art. 1(3) TEU:

'[...] The Union shall replace and succeed the European Community.'

Art. 47 TEU:

'The Union shall have legal personality.'

Treaties continued

- The Treaties are the basis for the functioning of the EU
- Set out objectives, institutional arrangements
- Environment – Articles 191-193(old 174 – 176)

Environment-191

- Union policy on the environment shall contribute to pursuit of the following objectives
 - Preserving, protecting and improving the quality of the environment
 - Protecting human health,
 - Prudent and rational utilisation of natural resources,
 - Promoting measures at international level to deal with regional or worldwide environmental problems, ***and in particular combating climate change***

Environment continued

- Union policy shall aim at a high level of protection taking account of the diversity of situations in the various regions
- It shall be based on the precautionary principle and on the principles that preventive action should be taken ,that environmental damage be rectified at source and that the polluter should pay.
- In preparing policy the Union takes account of scientific and technical data, regional conditions in the Union, costs and benefits

Union Institutions-article 13

- The European Parliament
- The European Council-now an official institution
- The Council
- The European Commission
- The Court of Justice of the European Union
- The European Central Bank-new –now formally an institution
- The Court of Auditors
- Each institution shall act within the limits of the powers conferred on it in the Treaties and in conformity with the procedures and conditions set out in them

The institutions-The European Parliament

- the ***European Parliament***, represents the EU's **citizens** (was "peoples" in 189 TEC) and is directly elected by them.
- The main job of Parliament is to pass European laws on the basis of proposals presented by the European Commission. It co-legislates, exercises political control
- Parliament shares this responsibility with the Council of the European Union. Parliament and Council share joint authority for approving the EU's €130 billion annual budget.
- Maximum of 750 MEP's, plus the President

The Council

- the Council of the European Union, represents the individual Member States. The Council consists of Ministers from the National Governments of all the EU countries.
- It is the EU's principal decision-taking body. It shares with Parliament the responsibility for passing EU laws.
- It is also in charge of the EU's foreign, security and defence policies, and is responsible for key decisions on justice and freedom issues

The European Commission

- the European Commission, seeks to uphold the interests of the Union as a whole.
- It drafts proposals for new European laws, which it presents to the European Parliament and the Council.
- It manages the day-to-day business of implementing EU policies and spending EU funds.
- The Commission also makes sure that everyone abides by the European treaties and laws.
- It can act against rule-breakers, taking them to the European Court of Justice if necessary.

Presidency of the EU

- Czech Republic 2009
- Sweden 2009
- Spain 2010
- Belgium 2010
- Ireland 2013
- 6 monthly cycles
- 3 Presidency programmes
- Chair of Council and Working Party

Legal Acts of the Union

- Art. 288 TFEU (formerly Art. 249 EC):
'To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.'

Rules and procedures

- The rules and procedures for EU decision-making are laid down in the treaties.
- Every proposal for a new European law is based on a specific treaty article, referred to as the 'legal basis' of the proposal.
- This determines which legislative procedure must be followed.
- Environment directives mostly "co-decision"

The main forms of EU law are Directives and Regulations

- Directives are legislative instruments which reconcile the dual objective of both securing the necessary uniformity of Community law and respecting the diversity of national traditions and structures.
- Directives are binding on Member States as to the result to be achieved but leave it to the respective national authorities to decide how the Community objective set out in the directive is to be incorporated into their domestic legal systems before a specified date.
- A directive does not acquire legal force and effect until the date for implementation of the directive has expired.

Regulations

- Regulations are legislative instruments of general application. They apply to abstract rather than individual situations. For example, many regulations apply to operators in the agricultural sector-Animal By Products and Waste Shipments.
- Regulations are binding in their entirety. This means that a Member State has no power to apply regulations incompletely or to apply only those provisions of which it approves.
- A regulation is directly applicable, which means that it creates law which takes immediate effect in all the Member States in the same way as a national instrument, without any further action on the part of the national authorities.
- See Regulation (EC) No 1013 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

■ **Regulations-continued**

Automatically become part of the national legal order (implies that their provisions are clear and precise).

Can be implemented by primary legislation or regulations under the European Communities Acts 1972-2009

■ **Directives**

Must be implemented (i.e. transposed into national law) within a certain period. Directive 2008/98/EC of 19 November 2008 on waste (WFD) –12 December 2010 for transposition OJ No L312 of 22.11.2008

■ **Decisions**

Binding, concrete, may be specific (i.e. addressed to a limited number of persons). For example Council Decision 97/640/EC Ban amendment to the Basel Convention-re hazardous waste movements and their disposal and Decision No 1600/2002/EC-6EAP

Non-legislative Acts

Art. 289(1)-(3) TFEU:

Measures other than regulations,
directives and decisions.

- **'Soft law'**, i.e. policy papers and the like
Not binding. e.g.:

- Recommendations-e.g RMCEI;
- Opinions;
- Resolutions-see OJ C 76 ,11.3.1997 page1 referred to in recital 7 of the WFD
- Communications-e.g . **Commission Communication towards a thematic strategy on the prevention and recycling of waste-May 2003**

How are directives developed?

- Proposed by the Commission –they have the right of initiative
- On request from Council-Council conclusions
- To deliver on an international agreement *e.g. climate*
- To deliver on commitment in the *6th Environment Action Programme*
- Negotiated among Member States in Council Working Parties
- Adopted by Parliament
- Adopted by Council

Coreper –article 240

- Committee of Permanent Representatives of the Member States
- Prepares the work of the Council and carries out tasks assigned to it by Council
- Laws are processed by Coreper before Council
- Before that they are discussed in the WG
- Instructions via Permanent Representation

Oireachtas Scrutiny and Cabinet

- Oireachtas Scrutiny Act, 2002
- Cabinet Committee on EU Affairs
- Interdepartmental Committee on EU Affairs
- Committees

Following adoption of legislation-transposition

- Transposition of directives
- Correct transposition very important
- Timely transposition
- Primary legislation-Waste Management Act 1996 No 10 etc or secondary legislation-European Communities Act 1972 as amended-S.I No 566 of 2009-management of waste from the extractive industries

2008 Communication on EU environmental law

- Identification of challenges
 - Late/non-compliant transposition of Directives
 - Failure to complete key tasks (infrastructure requirements, reporting, designations, etc)
 - Non-compliance with procedural requirements (lack of permits, absence of assessments, etc)
 - Weak enforcement at national level

Emphasis on proactive work

- Improved quality of EU legislation
- Guidance documents
- Performance scoreboards
- Community co-financing
- Networks and dialogue (e.g. IMPEL)

2008 Communication on EU environmental law

- Dealing with citizens grievances and disputes
 - Aarhus Convention and related EU legislation
 - EU Pilot scheme)
 - Judicial training initiative

2008 Communication on EU environmental law

- Priorities for Commission legal action identified:
 - Bad transposition of Directives (risk-based approach)
 - Lack of compliance with fundamental obligations under EU environmental law (designations of Natura 2000-sites,)
 - Horizontal cases (addressing systemic problems –see ECJ C494/01 or with a broad scope in areas like waste, waste water or air quality)
 - Large infrastructure projects (with EU funding)
 - External pressure to deal with individual non-priority cases, in particular from EU Parliament.

Implementation

- Implementation of directives and regulations-Commission will be checking
- Member State obligations
- Commission duties-guidelines for interpretation
- TAC's or other committees

Commission infringement procedures- Article 260-old 228

- If the Court of Justice finds that a MS has failed to fulfill an obligation under the Treaties the MS shall be required to take the necessary measures to comply with the judgement
- New Commission powers to bring the case before the ECJ if MS fails to comply with a judgement and after giving the MS time to submit obs it shall specify the amount of the lump sum or penalty payment to be paid which it considers appropriate in the circumstances
- Also if the Commission brings a case before the ECJ under article 226 where there is a failure to notify a transposition the Commission may impose a lump sum or penalty which can take effect on the date of the judgement

Infringements

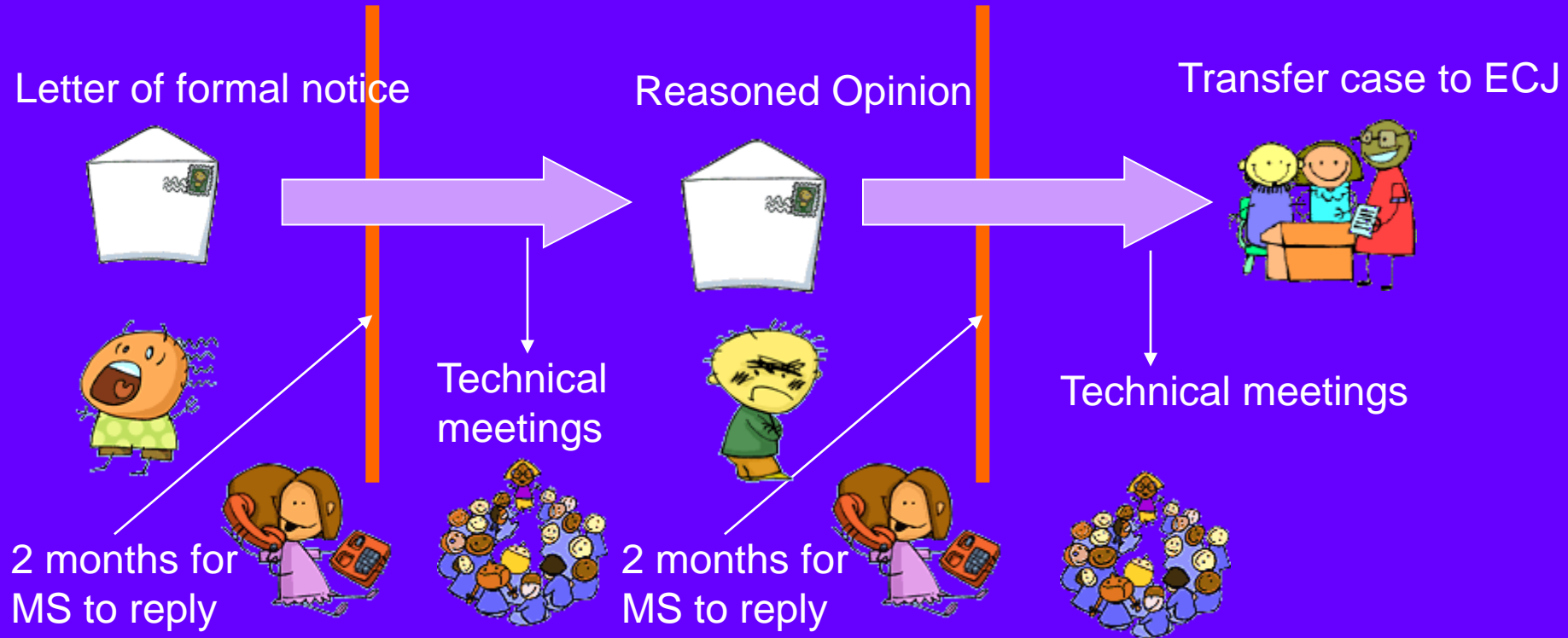
- Type

- Non transposition/late transposition
- Bad transposition
- Bad implementation

- Source

- Commission's own initiative
- Complaint *e.g. from a member of the public or an NGO*
- Follow up to a Petition to the European Parliament

Infringement process – an overview



Penalties-lump sum/daily pen.

- COMMISSION COMMUNICATION SEC(2005)1658
- Application of Article 228 of the EC Treaty
- The fixing of the sanction must be based on the objective of the measure itself, that is to ensure effective application of Community law. Cion considers that the calculation should be based on three fundamental criteria:
 - - *the seriousness of the infringement,*
 - - *its duration,*
 - - *the need to ensure that the penalty itself is a deterrent to further infringements*

Websites

- http://ec.europa.eu/community_law/directives/directives_en.htm
- http://europa.eu/abc/treaties/index_en.htm
- http://ec.europa.eu/codecision/images/diagram_en.gif
- http://ec.europa.eu/codecision/stepbystep/text/index_2_en.htm
- <http://curia.europa.eu/en/content/juris/index.htm>
- http://ec.europa.eu/ireland/about_the_eu/how_the_eu_works/index_en.htm

Many thanks

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