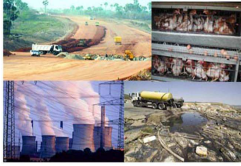


WORKSHOP ON EU LEGISLATION

ENVIRONMENTAL IMPACT ASSESSMENT

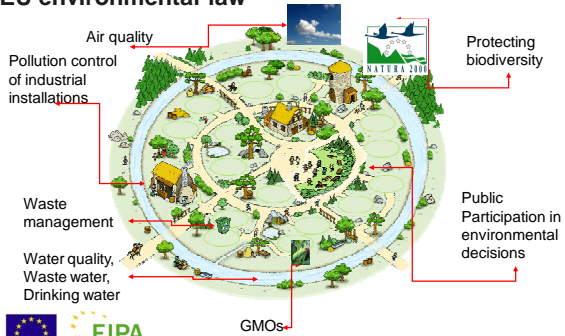


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EU environmental law and national Courts :
an introduction



EU environmental law



2

Two ways for compliance with EU legislation

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



3

The mission of the Commission

■ Article 17 TUE

“The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union.(...)”

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. (...)”



Bringing a case to the Court of Justice

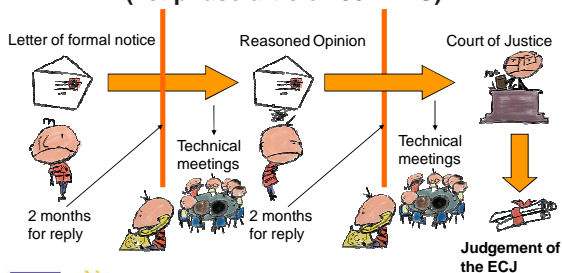
■ Article 258 TFEU

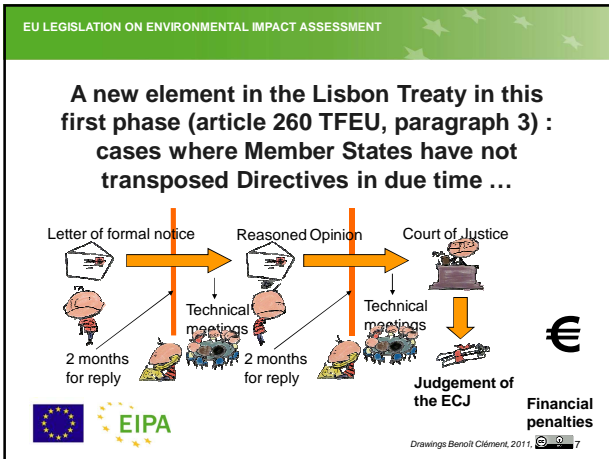
«If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

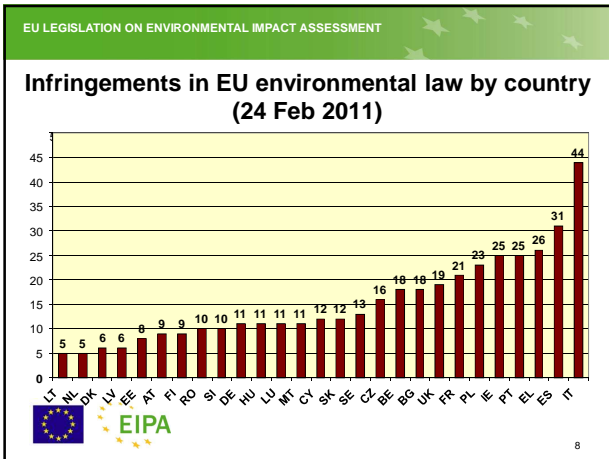
If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union. »

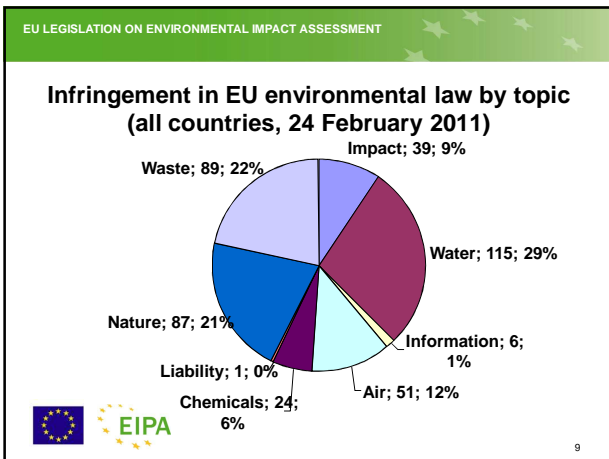


How does the procedure work in practice ? (1st phase article 258 TFEU)









The 2nd reference of a case to the ECJ

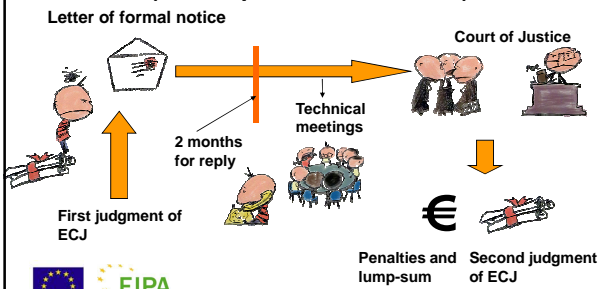
■ **Article 260 TFEU**

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

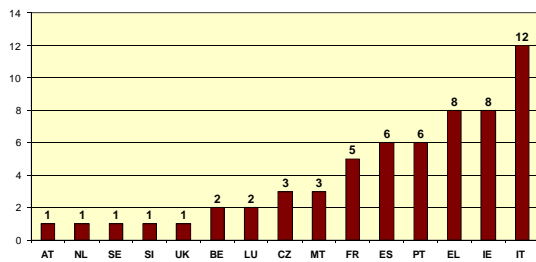
If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.(...)



How does the procedure work in practice ? (2nd step : article 260 TFEU)



EU environmental law infringement cases (cases article 260 TFEU by country – 24 February 2011)



Action at the level of national Courts: the concept of direct effect

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



What is « direct effect » ?

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



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

- Judges must try to have a reading of national law in conformity with EU law
 - **Case 106/89 Marleasing**
- EU law = national law for judges (raising points of law based on EU law)
 - **Case 72/95 Kraaijeveld**
- If it is national law incompatible with EU law, then judges have to discard national law
 - **Case 148/78 Ratti**



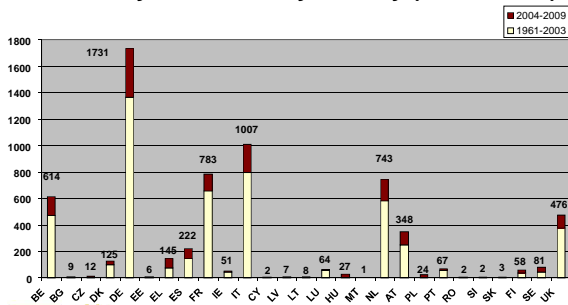
The preliminary reference mechanism

- The text of article 267 TFEU has not been much modified compare to old article 234 EC
- This mechanism is in place since the beginning of the EU
- It is the source of the EU law precedence and EU legal order : Case 6/64, Costa/ENEL

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



Preliminary references by country (end of 2009)



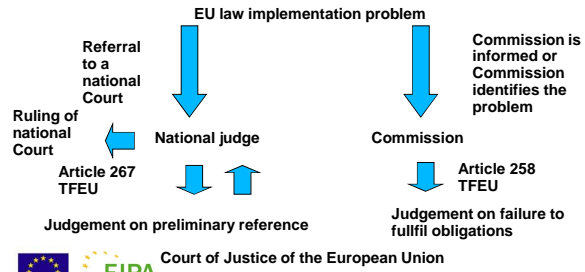
Why referring a question to the ECJ ?

- A problem related to EU law
- A problem which is not hypothetical
- A problem which was not already solved

See : <http://www.juradmin.eu/fr/jurisprudence/guide/index.html>



Conclusion : 2 complementary alternatives for ensuring compliance with EU law



Court of Justice of the European Union
