



**European Judicial Training Network
Réseau Européen de Formation Judiciaire**

The Administrative Law Training Guidelines



With the support of the European Union

EJTN Administrative Law Sub-Working Group

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INTRODUCTION

ADMINISTRATIVE LAW TRAINING GUIDELINES: OBJECT, SCOPE AND STRUCTURE

The Administrative Law Training Guidelines are the result of a yearlong project developed under the framework of the EJTN Working Group Programmes' Administrative Law Sub-Working Group. Based on a thorough assessment of the areas in need of further training in the field of European Administrative Law resulting from a survey of judges, prosecutors and judicial trainers, the Administrative Law Training Guidelines represent a diverse compendium of legal contributions from the Romanian National Institute of Magistracy (NIM), the Portuguese Center for Judicial Studies (CEJ), the Polish National School of Judiciary and Public Prosecution (KSSIP), the Latvian Judicial Training Center (LTMC) and the Academy of European Law (ERA).

As evidenced by the title, the present Guidelines are intended to serve as an up-to-date authoritative index of the most seminal legislation, case-law and relevant documentation in the respective sub-fields of European Administrative Law. The aim of the Guidelines is to serve as a working tool for the development of quality training in the field of Administrative Law across Europe, as well as a handbook for judicial trainers and practitioners on the most recent developments in the fundamental areas of EU Administrative Law. The Guidelines do not purport to be a textbook on the topics covered; they are designed to be a practical and manageable guide for immediate application and training.

The authorial diversity of the different texts provides the Guidelines with a multifaceted approach to the main topics identified by legal experts and practitioners as needing more pressing, up-to-date training. As a result, the Guidelines cover a broad range of legal issues through a total of six chapters:

Chapter I – The General Principles of European Union Law

Chapter II – The European Union Judicial System

Chapter III – European Human / Fundamental Rights

Chapter IV – European Union Migration and Asylum Law

Chapter V – European Union Tax Law

Chapter VI – European Union Environmental Law

Each Chapter provides the reader with a detailed outline of the relevant legislative and jurisprudential sources on the topic being discussed, as well as a description of the suggested Trainers, Trainees, Methodology and Training Format best-suited for quality training in the specific area. In addition, a ranking on the training priority of subject matters and the adequacy of complementary e-learning methods for optimal training is included.

Being an open-ended and ever-evolving document, the present Guidelines will be subject to an annual review to ensure the quality of its content and the completeness of its references.

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CHAPTER I

THE GENERAL PRINCIPLES OF EUROPEAN UNION LAW

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I. THE PRIMACY OF EUROPEAN UNION LAW AND ITS IMPACT ON NATIONAL ADMINISTRATION

1. Introduction

The classic concepts of international law according to which states retain sovereignty in the exercise of their international treaty obligations and the domestic legal effects of the obligations thus assumed are a matter for each national legal order were overturned by the Court of Justice in the 1960's. The Treaty Establishing the European Community (EEC Treaty), ruled the Court, had established a "new order of international law for the benefit of which the states have limited their sovereign rights" (Case 26/62 *Van Gend en Loos*). By contrast with ordinary international treaties, the EEC Treaty has created "its own legal system" which became "an integral part of the legal systems of the Member States and which their courts are bound to apply" (Case 6/64 *Costa v ENEL*).

The principle according to which EU law must take precedence over national law in case of conflict was first articulated in the famous judgment *Internationale Handelsgesellschaft*. For the judiciary, the practical consequences are those spelled out in *Simmenthal*, whereby every national court must apply EU law "in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent". The obligation to set aside national law does not imply a declaration of nullity of the conflicting national provision, which may apply to legal relationships that are not covered by the EU law provision.

For national judges and prosecutors it is important to understand the practical implications of this principle, its effects on the relationship with national Constitutional Courts (where they exist), the conceptual basis on which their Member States recognise the supremacy of EU law and the limits of this acceptance from a national perspective, as well as the interaction with other significant concepts of national law recognised at EU level, such as the *res judicata* principle.

2. Instruments and Case Law

A. Instruments

Article 4(2) Treaty of the European Union (TEU)

Declaration 17 attached to the Treaties by the Treaty of Lisbon

B. Case Law

(1) General

[Case 26/62](#) *Van Gend en Loos* [1963] ECR 1

[Case 6/64](#) *Costa v ENEL* [1964] ECR 585

[Case 11/70](#) *Internationale Handelsgesellschaft* [1970] ECR 1125

[Case 106/77](#) *Simmenthal* [1978] ECR 629

(2) Relationship with constitutional procedures

[Joined Cases C-188/10 and 189/10](#) *Melki and Abdeli* [2010] ECR I-5665

Gauweiler v Treaty of Lisbon, Judgment of 30th June 2008, German Federal Constitutional Court, 2 be 2/08

(3) Supremacy and the principle of res judicata

[Case C-234/04](#) *Kapferer* [2006] ECR I-2585

[Case C-119/05](#) *Lucchini* [2007] ECR I-2585

[Case C-2/08](#) *Fallimento Olimpiclub* [2009] ECR I-7501

3. Trainers

Trainers could be selected from among scholars and trainers from national institutions.

4. Trainees

Training on this topic is recommended for junior judges and prosecutors, as well as future/trainee judges and prosecutors.

5. Methodology

A. Training Method

Part of a basic seminar dedicated to the application of EU law in the national systems (together with the topics of direct effect and consistent interpretation) of EU law.

B. Complementary e-learning

Complementary e-learning is not necessary.

C. Priority

Top priority.

D. Format

Seminars held at transnational level and EU wide would be beneficial to the understanding of the practical consequences of the various national constitutional approaches of the principle of primacy.

II. THE EFFECT OF EU LAW AND ITS IMPACT ON NATIONAL ADMINISTRATION

1. Introduction

The ability to apply the concept of a EU provision being sufficiently clear, precise and unconditional to be invoked and relied on by individuals before national courts, and the understanding of its limits are essential to all those who practice law.

Training on this topic is central to the application of EU law, considering the fact that the whole concept has been developed and continues to be nuanced over the years by the Court of Justice through its jurisprudence. Judges ought to acquire and/or deepen their understanding of the relationship between national provisions and European provisions, and to identify and tackle the conflict between such norms.

2. Instruments and Case Law

A. Instruments

Article 288 Treaty on the Functioning of the European Union (TFEU)

B. Case Law

For Treaty provisions

[Case 26/62](#) *Van Gend en Loos* [1963] ECR 1

[Case C-438/05](#) *Viking Line* [2007] ECR I-10779

For regulations

[Case C-403/98](#) *Azienda Agricola Monte Arcosu* [2001] ECR I-103

[Case C-379/04](#) *Dahms* [2005] ECR I-8723

For decisions

[Case C-18/08](#) *Foselev* [2008] ECR I-8745

For directives

[Case 8/81](#) *Becker* [1982] ECR 53

[Case C-363/05](#) *JP Morgan Fleming Claverhouse Investment Trust* [2007] ECR I-5517

[Case C-157/02](#) *Rieser Internationale Transporte* [2004] ECR I-1477

[Case C-441/99](#) *Riksskatteverket v Gharehveran* [2001] ECR I-7687

[Case C-303/98](#) *SIMAP v Valencia Sindicato de Médicos Asistencia Pública* [2000] ECR I-7963

[Joined Cases C-453/02 and 462/02](#) *Finanzamt Gladbeck v Linneweber* [2005] ECR I-1131

[Case C-62/00](#) *Marks & Spencer* [2002] ECR I-6325

[Case C-201/02](#) *Delena Wells* [2004] ECR I-723

[Case C-321/05](#) *Kofoed* [2007] ECR I-5795

[Case C-41/74](#) *Van Duyn v Home Office* [1974] ECR 1337

[Case C-43/75](#) *Defrenne v Sabena (No 2)* [1976] ECR 455

[Case C-188/89](#) *Foster v. British Gas* [1990] ECR I-3313

[Case C-91/92](#) *Faccini Dori v Recreb* [1994] ECR I-3325

[Case C-152/84](#) *Marshall* [1986] ECR 723

3. Trainers

Trainers could be selected from among scholars and trainers from national institutions.

4. Trainees

Training on this topic is recommended for junior judges and prosecutors, future/trainee judges and prosecutors. Senior judges may also benefit from training on this topic, in the framework of a specialised seminar.

5. Methodology

A. Training Method

Part of a basic seminar dedicated to the application of EU law in the national systems (together with the topic of supremacy of EU law) or introductory part of any specialised seminar.

B. Complementary e-learning

Complementary e-learning is not necessary.

C. Priority

Top priority.

D. Format

Seminars held at trans-national level and EU wide would be beneficial to the understanding of national practices and problems, namely in the the application of directives.

III. NON-DISCRIMINATION, PROPORTIONALITY AND LEGITIMATE EXPECTATIONS

1. Introduction

For members of the judiciary, the origins and development of the general principles of EU law is a matter of secondary importance, compared to the function they fulfil in the EU legal order as an aid to interpretation in cases where EU law is applicable and as a yardstick against which the legality of EU measures and of Member State action when applying EU law is measured.

Proportionality, as a general principle of EU law, is consecrated in Article 5(4) TEU, which provides that the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaty. The conditions of application are laid down in a Protocol attached to the Treaties. For the purpose of challenging a EU measure or a national measure adopted in the application of an EU measure, applying the test of proportionality involves an analysis of whether the measure is appropriate for the attainment of the objective pursued and whether it does not go beyond what is necessary to achieve it. There are distinct situations where plaintiffs allege a restrictive policy choice, or that their rights (e.g. of property, to pursue a profession or trade) have been restricted by Union measures. It is important that national judges understand their role, especially when the principle of proportionality is invoked to challenge the validity of an EU act, given that national courts cannot declare an EU act invalid according to the Foto-Frost rule. There are also situations where it is left to the national courts to apply to the circumstances of the case the guidelines given by the Court of Justice of the European Union (CJEU) as to what the principle of proportionality entails.

Non-discrimination as a general principle of EU law which may be used as a ground to challenge Union action requires that comparable situations must be treated in the same manner and non-comparable situations differently, unless there are objective grounds for such treatment.

Finally, infringement of the principle of legitimate expectations, which is closely connected to the principle of legal certainty, is one of the most common grounds for review, leading however to the annulment of EU measures only in some cases. National courts may be called upon to rule in cases where national authorities act within the scope of application of EU law. Protection of legitimate expectations may arise in various situations, regarding the manner and form of implementing legislation, or in connection to the retroactive application of implementing measures and it may lead to restrictions on the recovery of sums paid by national authorities in breach of EU law.

2. Instruments and Case Law

Principle of non-discrimination

a. Instruments

General

Articles 2 and 3(3) TEU – non-discrimination as one of the foundations of the EU

Article 19(1) TFEU – legal basis for Union action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation

Article 21 of the Charter of Fundamental Rights, in the context of Chapter III ‘Equality’ – general prohibition on discrimination on an open-ended list of grounds

Specific (examples)

Article 18 TFEU – general prohibition on grounds of nationality in the context of free movement of persons

Article 40(2) TFEU – non-discrimination in the field of agriculture

Article 110 TFEU – non-discrimination in the context of internal taxation

b. Case Law

Application of the principle in agricultural law

[Joined Cases 103/77 and 145/77](#) *Royal Scholten-Honig* [1978] ECR 2037

[Case 139/77](#) *Denkavit* [1978] ECR 1317

[Case C-241/95 *Accrington Beef*](#) [1996] ECR I-6699

[Case C-189/01 *Jippes*](#) [2001] ECR I-5689

Principle of proportionality

a. Instruments

Article 5(4) TEU

Protocol on the application of the principles of subsidiarity and proportionality

b. Case law

Review of Union action: policy measures

[Case C-331/88 *Fedesa*](#) [1990] ECR I-4023

[Case C-491/01 *British American Tobacco*](#) [2002] ECR I-11453

[Joined Cases C-27/00 and C-122/00 *Omega Air*](#) [2002] ECR I-2569

[Case C-210/03 *Swedish Match*](#) [2004] ECR I-11893

[Case C-344/04 *IATA*](#) [2006] ECR I-403

[Case C-58/08 *Vodafone*](#) [2010] ECR I-4999

[Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni*](#) [1994] ECR I-4863

[Joined Cases C-37/06 and 58/06 *Viamex Agrar Handels Gmbh and Zuchtvieh-Kontor Gmbh*](#) [2008] ECR I-69

Review of Union action: infringement of rights

[Case 44/79 *Hauer*](#) [1979] ECR 3727

[Case C-491/01 *British American Tobacco*](#) [2002] ECR I-11453

[Joined Cases C-20/00 and 64/00 *Booker Aquacultur and Hydro Seafood*](#) [2003] ECR I-11453

Review of Union action: excessive penalties

[Case 181/84 *ED&F Man \(Sugar\)*](#) [1985] ECR 2889

[Case 240/78 *Atalanta Amsterdam*](#) [1979] ECR 2137

[Case 122/78 *Buitoni*](#) [1979] ECR 677

[Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handels Gmbh and Zuchtvieh-Kontor Gmbh*](#) [2008] ECR I-69

Principle of legitimate expectations

a. Case Law

[Case C-177/90](#) *Kühn* [1992] ECR I-35

[Case C-299/94](#) *Anglo-Irish Beef Processors International* [1996] ECR I-1925

[Case C-63/93](#) *Duff* [1996] ECR I-569

Legitimate expectations and national measures

[Case C-313/99](#) *Mulligan* [2002] ECR I-5719 – for conditions imposed on implementing legislation

[Case C-62/00](#) *Marks & Spencer* [2002] ECR I-6325 – for impact on national procedure

[Joined Cases C-205/82 to C-215/82](#) *Deutsche Milchkontor* [1983] ECR 2633 – for recovery of unduly paid EU sums

3. Trainers

Trainers could be selected from among scholars, trainers from national institutions and EU experts (the latter for the specialised seminars).

4. Trainees

Training on this topic is recommended for junior judges, future/trainee judges, and specialised seminars dedicated to particular areas and recent developments in the jurisprudence of the CJEU for senior judges.

5. Methodology

A. Training method

Part of a basic seminar dedicated to the application of EU law or a specialised seminar.

B. Complementary e-learning

Complementary e-learning is not necessary.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Training can be carried out at all levels, starting with local and national, particularly for trainee judges and junior judges. However, seminars held at transnational level and EU wide would be beneficial to senior judges for the understanding of the practical approaches and problems colleagues from other Member States encounter in cases where general principles of EU law are used by plaintiffs to challenge Union or Member State action.

IV. NATIONAL PROCEDURAL AUTONOMY AND EX-OFFICIO APPLICATION OF EU LAW

1. Introduction

According to the jurisprudence of the Court of Justice, in the absence of harmonising procedural rules, it is for the domestic national system of each Member States to designate the courts having jurisdiction and to determine the procedural conditions governing legal actions intended to ensure the protection of rights which citizens derive from EU law, subject to two conditions:

- *equivalence* (same procedures for the protection of rights deriving from EU law as for those deriving from national law), and
- *practical possibility* (procedures should not make the exercise of EU rights impossible in practice)

Training on this topic is intended to provide a forum for debate among national judges that would help them in the process of balancing effective judicial protection of EU law rights and the application of legitimate national procedures. It is an area where the importance and the application of many judgments of the Court of Justice depend on the circumstances of the case and where national judges need to undertake a case-by-case

basis analysis of the relevant national procedural rules that allegedly restrict the exercise of EU law rights.

2. Instruments and Case Law

a. Instruments

Article 19 TEU

Article 47 of the Charter of Fundamental Rights

b. Case law

National procedural autonomy and effectiveness

[Case C-199/82 San Giorgio](#) [1983] ECR 3595

[Case C-213/89 Factortame I](#) [1990] ECR I-2433

[Joined Cases C-143/88 and C-92/89 Zuckerfabrik](#) [1991] ECR I-415

[Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 ABNA](#) [2005] ECR I-10423

[Case C-432/05 Unibet](#) [2007] ECR I-2271

[Case C-309/06 Marks & Spencer](#) [2008] ECR I-2875

[Case C-524/04 Test Claimants in the Thin Cap Group Litigation](#) [2007] ECR I-2107

[Joined cases C-397/98 and C-410/98 Metallgesellschaft & Hoechst](#) [2001] ECR I-01727

National procedural autonomy and ex-officio application of EU law

[Joined Cases C-430/93 and 431/93 Van Schijndel & Van Veen](#) [1995] ECR I-4705

[Case C-312//93 Peterbroeck](#) [1995] ECR I-4599

[Case C-446/98 Fazenda Pública](#) [2000] ECR I-11435

3. Trainers

Trainers could be selected from among scholars, trainers from national institutions and EU experts.

4. Trainees

Training on this topic is recommended for junior judges, future/trainees judges, and senior judges in the framework of specialised seminars dedicated to problem areas and recent developments in the jurisprudence of the CJEU.

5. Methodology

A. Training method

Part of a basic seminar dedicated to the application of EU law in the national systems targeted at junior and trainee judges and specialised seminars for senior judges.

B. Complementary e-learning

Complementary e-learning is not necessary.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

The training objectives relative to the topic of national procedural autonomy are best accomplished at national level, in so far as comparisons to procedures from other national systems are of limited value. Seminars held at trans-national level and EU wide would be beneficial to the understanding of the general guidance that the CJEU provides on how national judges are to find a balance between effective judicial protection and the autonomy of national rules.

V. STATE LIABILITY

1. Introduction

The principle of State liability for loss and damage caused to individuals as a result of breaches of EU law for which the State can be held responsible is inherent in the system of the Treaty, ruled the Court of Justice twenty years ago, thus giving expression to the principle *ubi jus ibi remedium*.

Individuals thus harmed have a right to reparation where three conditions are met:

- the rule of EU law infringed must *be intended to confer rights* upon them;
- the breach of that rule must be *sufficiently serious*;
- there must be a *direct causal link* between the breach and the loss or damage sustained by the individuals.

The objectives of the seminar are to achieve an understanding of the concept of state liability and of the content of the conditions established by the Court, to foster debate on the issue of the practical application of the conditions set by the Court in the jurisprudence and to offer a multi-national framework for discussion on the topic of compensatory action.

2. Instruments and Case Law

c. Case law

The principle

[Joined Cases C-6/90 and 9/90](#) *Francovich and Bonifaci v Italy* [1991] ECR I-5357

[Joined Cases C-46/93 and C-48/93](#) *Brasserie du Pêcheur/Factortame III* [1996] ECR I-1029

[Case C-224/01](#) *Köbler v Austria* [2003] ECR I-10239

[Case C-173/03](#) *Traghetti del Mediterraneo v Italy* [2006] ECR I-5177

The application of the principle

[Joined Cases C-94/95 and C-95/95](#) *Bonifaci* [1997] ECR I-3969

[Case C-392/93](#) *British Telecommunications* [2006] ECR I-1631

[Joined Cases C-283/94, C-291/94 and C-292/94](#) *Denkavit International* [1996] ECR I-5063

[Case C-5/94](#) *Hedley Lomas* [1996] ECR I-2553

[Case C-470/03](#) *AGM-COS.MET* [2007] ECR I-2749

[Case C-452/06](#) *Synthon v Licensing Authority of the Department of Health* [2008] ECR I-7681

[Case C-222/04](#) *Peter Paul* [2004] ECR I-9425

[Case C-150/99](#) *Stockholm Lindöpark Aktiebolag v Sweden* [2001] ECR I-493

[Case C-445/06](#) *Danske Slagterier* [2009] ECR I-219

[Case C-118/08](#) *Transportes Urbanos* [2010] ECR I-635

3. Trainers

Trainers could be selected from among scholars, trainers from national institutions and EU experts (the latter for the specialised seminars).

4. Trainees

Training on this topic is recommended for junior judges, future/trainee judges and senior judges. It can be organised at various levels, in such a way that it can aim at familiarising trainees and junior judges with state liability as a legal remedy for individuals who suffered damages as a result of State infringement of EU law, as well as at creating the setting for a debate among senior judges regarding national approaches to actions for compensation.

5. Methodology

A. Training Method

Training on this topic can be achieved through a basic seminar or as part of a specialised seminar dedicated to remedies for individuals.

B. Complementary e-learning

Complementary e-learning is not necessary.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Training can be carried out at all levels, starting with local and national. However, seminars held at trans-national level and EU wide would be beneficial to the

understanding of the practical approaches to the conditions of state liability in the various Member States.

CHAPTER II

THE EUROPEAN UNION JUDICIAL SYSTEM

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I. INTRODUCTION

The following chapter has been drawn up for the purpose of setting up a common training programme for Judges, Public Prosecutors and other EU professionals on the topic of the European Union Judicial System and follows the structure listed below:

- 1) An introduction, **for each sub-topic**;
- 2) Some pertinent legal instruments, **for each sub-topic**, without prejudice to research and suggestions at the training events themselves, to be set forth by the respective trainer;
- 3) Reference to case law of the Court of Justice of the European Union, **for each sub-topic**, without prejudice to other references brought up at the training event itself;
- 4) An indication of the method that, **generally speaking**, can lead to greater effectiveness of the training.

II. THE ROLE AND TASKS OF THE EUROPEAN COURT OF JUSTICE

1. Introduction

Alongside the European Commission, the European Parliament and the Council, the institutional framework laid down by the Treaties that created the European Economic Communities, enshrined a court – the Court of Justice of the European Communities (CJEC).

Under this institutional framework, different tasks were entrusted to each one of the institutions or bodies of the Communities. Consequently, the job of Court of Justice is to **“ensure that in the interpretation and application of this Treaty the law is observed”** (Article 164 of the EC Treaty, amended by Article 220 of the Treaty of Amsterdam) and in accordance with the general rule, which is applicable to all the institutions: **“Each institution shall act within the limits of the powers conferred upon it by this Treaty”** (Article 4 of the EC Treaty and Article 7 of the Amsterdam Treaty).

The Court of Justice of the European Communities was part of and remains part of – today, as the Court of Justice of the European Union – a specific legal system. This system is the result of a *sui generis* organisation, of a markedly economic nature initially, and has slowly developed over time, through a unique process of political integration, into the European Union of today.

Indeed:

At the top the Community legal order are: the Treaty on European Union, the Treaties establishing the European Community (EC), the European Atomic Energy Community (Euratom), The European Coal and Steel Community (ECSC) along with other instruments with special meaning in the institutional Community environment. Due to its role as a Framework Treaty and because it was set up in the basic pillar of development of the Community system, the EC Treaty, along with the UE Treaty, comprises Basic Community Law, par excellence. Being based on the permanent limitation of the sovereign rights of Member States, who are asked to regulate a regulatory, economic and political convergence process, the level of political impetus needed to complete this process makes this Basic Law a true **basic Constitutional Charter**.¹

In this context and since its first decisions, the Court of Justice has unequivocally confirmed its true nature, by holding that **“our court is not an international court, but rather the court of a Community created by six States based on a model that is more federal than international in its organisation. (Opinion of Advocate-General Lagrange in Case 8/55, Fédération Charbonnière de Belgique).**

In the same way, in *Van Gend & Loos (Case 26/62)* the court reiterates that Community law is a new legal system in international law. Among its characteristics is the role reserved to the

¹ José Palácio Gonzalez in *Derecho Procesal del Contencioso Comunitario*, pp 36 and 37.

court in Article 177, which is **to guarantee uniformity in the interpretation of the Treaty by the national courts.**²

This case law was, once again, reaffirmed in the **Costa/Enel Case (Case C- 6/64)**.

Changes to the Treaty, introduced by the TEU, which was amended by the Treaty of Amsterdam, meant the court was also empowered to “**give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this title and on the validity and interpretation of the measures implementing them**”. (Article 35 (ex K7) and Article 46 (ex L), of the Treaty on European Union as amended by the Treaty of Amsterdam).

Organization and Functioning

The Treaty of Lisbon has maintained the role conferred upon the Court; its major impact has been regarding changes in its organisation.

Thus, Article 13 (1) of the Treaty on European Union (TEU) regulates the single institutional framework of the Union, providing for the Court of Justice of the European Union, alongside the other institutions.

Article 19 of the TEU, in turn, lists the courts which are part of the Court of Justice of the European Union: **The Court of Justice, the General Court and the Specialised Courts**, although it is only later, in the **Treaty on the Functioning of the European Union (TFEU)**, that regulations are laid down regarding other specific matters, particularly on organisation and jurisdiction related to subject matter and the means for litigation. (Articles 251 and 281 of the TFEU)

This means that within the institution “Court of Justice of the European Union” there are now three categories of Community courts: **the Court of Justice, the General Court and the Specialised Courts**, which exercise their respective powers under the Treaties (TEU and TFEU), the Statute of the Court of Justice and the Rules of Procedure.

2. Instruments and Case Law

A. Legal Instruments

- Treaty of the European Communities.

² Cf. A and op.cit. page 38

- Maastricht Treaty (Treaty on European Union)
- Treaty of Amsterdam
- Treaty of Nice
- Treaty of Lisbon (Treaty on European Union and Treaty on the Functioning of the European Union)
- Statute of the Court of Justice of the European Union

B. Case Law

- [Case 8/55](#) *Fédération Charbonnière de Belgique* [1956] ECR I-00245, and Opinion of Advocate-General, 12 June 1956
- [Case 26/62](#) *Van Gend en Loos* [1963] ECR 1
- [Case 6/64](#) *Costa v ENEL* [1964] ECR 585

III. THE PRELIMINARY RULING PROCEDURE

1. Introduction

The primary function of the Court of Justice is to ensure the uniform interpretation and application of Community law throughout the European Union, thereby guaranteeing the principle of legal equality to all. To this end, the Court of Justice renders judgments regarding matters referred to it by the national courts of Member States, so that, before a national court must make a decision on the substance of a case to be decided, it may, when necessary, obtain an “**authentic interpretation**” of Community law.

Article 234 of the EC Treaty provides for a preliminary ruling procedure for the national courts when these courts consider it necessary to obtain a ruling from the Court of Justice.

In such cases, the CJEU did not act, and does not act as a Court of appeal but instead as a body that provides an “authentic interpretation” of Community law in these two types of preliminary rulings:

- a) **Preliminary rulings on the interpretation of Community law**, where the national judge requests clarification from the Court of Justice on the interpretation of Community law so as to enable him or her to apply the law correctly;
- b) **Preliminary rulings on the validity of a legislative act**, where the national judge can ask the Court of Justice to verify the validity of an act.

In accordance with the Treaties (Article 234 of the EC Treaty and today **Article 267 of the TFEU**), the use of these mechanisms is (it would seem to be) optional for the national courts, although **Article 267(3) of the TFEU** (see Article 234 of the EC Treaty) obliges a judge to make use of it in situations in which appeals against a national court's decision are not possible. Therefore, the national judge must request a preliminary ruling when an issue (of interpretation) of Community law plays a decisive role in the case.

Nevertheless, and despite the imperative nature of this rule of the Treaty, it has come to be understood that, even in these cases, national courts can avoid this requirement when the interpretation of Community law is so “**obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved**”. That is, when the national court has no doubt as to how the question would be resolved (by the Court of Justice) or when the case is based on facts similar to those in other cases already decided by the CJEU. Naturally, this last perspective clearly means that the decisions of the CJEU can be considered “**binding precedents**” (along with the principle of the primacy of Community law) (**Cilfit Case**)

This mechanism results from the cooperation that should be present between the national courts and the Court of Justice of the European Union (bilateral and horizontal cooperation), and is recognizably the most important channel for accessing the CJEU. A reference for a preliminary ruling is essentially a “**request by one judge (national court) to another judge (Court of Justice)**”, even if it was one of the parties that raised the matter. Yet the national court isn't obliged to refer the case to the European Court of Justice simply because one of the parties has requested a preliminary ruling, except when, as mentioned above, that national court's decision can no longer be appealed.

On the other hand, the Court of Justice must respond to the request, unless the issue raised is outside its jurisdiction. Moreover, the interpretative decision of the Court of Justice has the

force of *res judicata* not just for that court, but for all of the courts of the Member States of the EU.

The Urgent Preliminary Ruling Procedure

The new objective defined for the EU by the Treaty of Amsterdam – the **creation of an area of freedom, security and justice** – has meant intense legislative activity concerning matters of great sensitivity such as justice and security.

Naturally, the national courts have been increasingly asked to interpret and apply rules that either arise directly from Community law (**Decisions**), or stem from it. The latter situation is the result of the transposition of EU legal instruments (e.g. **Framework Decisions**), making it necessary, when there are doubts, to request an interpretation of the rules and/or the validation of the respective acts.

The Court of Justice contributes towards the uniform interpretation of those rules through the “preliminary reference” mechanism.

Nevertheless, it was felt that the time limit for rulings by the Court of Justice was not compatible with the need to have decisions, without delay, on matters of a sensitive nature within the vast field of the AFSJ (matters regarding police cooperation, judicial cooperation in criminal matters, among others) and which often involve the deprivation of physical liberty.

In order to deal with such sensitive matters quickly, the urgent preliminary ruling procedure was introduced on 1 March 2008. It permits the court to act promptly in cases such as those involving the deprivation of liberty, parental authority or the custody of children.

To set up an appropriate mechanism, one that is markedly expeditious, new rules were introduced regarding: those who can participate, shorter procedural deadlines, and the setting up of a chamber of 5 judges who deal exclusively, for a period of a year, with cases that are covered by the AFSJ. It must also be noted that the new procedure makes extensive use of electronic means, including for communicating documents among all involved.

Furthermore, the last paragraph of Article 267 of the TFEU States that if a referral for a preliminary ruling is made during proceedings that are pending before a national court and concern a person held in custody, the Court of Justice should give a ruling as soon as possible.

2. Instruments and Case Law:

A. Legal Instruments

- Treaty of the EC
- Maastricht Treaty (Treaty on European Union)
- Treaty of Amsterdam
- Treaty of Nice
- Treaty of Lisbon (Treaty on European Union and Treaty on the Functioning of the European Union)
- Statute of the Court of Justice of the European Union

B. Case Law

- [Case 6/64](#) *Costa v ENEL* [1964] ECR 585
- [Case 16/65](#), *Schvarz* [1965] ECR 00877
- [Case 314/85](#) *Foto-Frost/Hauptsollamt Luebeckost* [1987] ECR 04199
- [Case C-555/07](#) *Küçükdeveci* [2012] ECR I-00365
- [Case C-459/03](#) *Gaston Schull* [2005] ECR I-04635

IV. MEANS FOR LITIGATION OR JUDICIAL REMEDIES

1. Introduction

The mission of the Court of Justice of the EU is to ensure compliance with the law in the interpretation and application of the Treaties, and for this purpose the necessary resources should be made available to guarantee effective judicial protection under EU law (Article 19 (1) TEU).

As the Union's highest court, the Court of Justice is its main instrument for judicial protection within the Community legal system and its task is to exercise judicial control over acts that apply Community law and to verify that the rules of Community law are interpreted correctly in all the Member States. This task is carried out within the limits of the powers that the Treaties and secondary legislation have conferred upon the Court of Justice.

The interpretation of Community rules is dictated by the requests of the national courts through the preliminary ruling system. On the other hand, the control of acts applying Community law is carried out in accordance with the resources established by the Treaty on the Functioning of the European Union, which permit the court to verify the activities of the Community institutions.

Hence, several direct means of redress (actions for annulment and actions for failure to act) and indirect means of redress (preliminary ruling as to validity, which has already been mentioned, and plea of illegality) were established.

A. Action for annulment (Articles 263 and 264 of the TFEU).

The Treaty on the Functioning of the European Union introduced significant changes to the previous regulation of actions for annulment when the Treaty of Lisbon entered into force.

I. Object

An action for annulment is one of the ways in which Community legality is controlled (Article 263 of TFEU). The Court reviews the:

- legality of legislative acts;
- legality of the acts of the Council, the Commission and of the European Central Bank, other than recommendations or opinions;
- legality of acts of the European Parliament, and of the European Council and other bodies or agencies intended to produce legal effects vis-à-vis third parties; see (b) and (c) of Article 271 (deliberations of the Board of Governors or of the Board of Directors of the European Investment Bank).

(1) Grounds

There are four reasons or grounds provided for by Article 263 of the TFEU:

- lack of competence;
- infringement of an essential procedural requirement;
- infringement of the Treaties or of any rule of law relating to their application;
- misuse of powers.

(2) Parties

a. *Standing to bring proceedings*

It has been the tradition to distinguish between preferential plaintiffs and non-preferential plaintiffs.

- The European Parliament, the Council and the Commission are preferential plaintiffs because they can bring an action (for annulment) before the CJEU without having to demonstrate direct interest, apart from maintaining Community legality. Furthermore, the European Court of Auditors, the Central European Bank and the Committee of the Regions can only bring actions against acts that undermine their prerogatives. These actions for annulment can be called specific actions.
- Natural or legal persons are non-preferential plaintiffs because the act they contest must be addressed to them or at the very least, must concern them directly and individually; on the other hand these non-preferential plaintiffs can also bring actions against a regulatory act, which is of direct concern to them and does not entail implementing measures.

b. *Capacity to be sued*

The institutions, organs and agencies of the EU have the capacity to have actions brought against them and so their actions can be challenged.

c. *Procedure*

The TFEU refers to the procedural rules of the CJEU established in the Statute of the Court of Justice and the Statute of the General Court.

The last paragraph of Article 263 refers to the period of time allowed for initiating proceedings – two months as of the date of publication of the act or its notification to the plaintiff, or of the date on which it came to the knowledge of the interested party, as the case may be, and Article 264 refers to the effects of the decision when the action is upheld (dealt with in (4)).

d. *Case Law*

- [Case 252/62](#), *Plaumann v Commission* [1963] ECR 25
- [Case C-309/89](#), *Codorniu v Council* [1994] ECR I-01853

- [Joined Cases T-480/93 and T-483/93](#) *Antillean Rice Mills and Others v Commission* [1995] ECR II-2305
- [Case C-321/95 P](#) *Greenpeace Council v Commission* [1998] ECR I-01651
- [Case C-50/00 P](#), *U.P.A. v Council* [2002] I-06677
- [Case C-149/96](#), *Grancesa Republic v Council* [1999] ECR I-08395

B. Proceedings for failure to fulfil an Obligation

Proceedings for failure to fulfil an obligation permit the Court of Justice to control Member States' compliance with their obligations under the Treaties (Article 258 TFEU).

I. Parties

a. Standing to bring proceedings

The Commission and the States are entitled to bring proceedings. Nonetheless, the case law of the Court of Justice has recognised the important function of individuals who, despite not having the capacity to bring proceedings, have a role in the procedure which can lead to proceedings for the failure to fulfil an obligation.

b. Capacity to be sued

The States have the capacity to have proceedings brought against them (Articles 258 and 259 of TFEU).

c. Procedure

Articles 258 and 259 establish that, before plaintiffs (Commission and States) bring proceedings for failure to fulfil an obligation before the Court of Justice, the Commission must give a period of time to the non-compliant State in which it can present its observations. The Commission then delivers a reasoned opinion that specifies a time limit within which the Member State is required to take the necessary measures to rectify the infringement and its effects. Once the time limit is up, the Commission may bring proceedings before the Court of Justice.

It should be noted that Article 259 – which specifically regulates proceedings brought by one State as a consequence of a failure to fulfil obligations by another State – also sets forth that if the Commission does not deliver an opinion within three months of the matter having been brought to its attention, proceedings can be brought before the CJEU.

Hence, and as follows from above, there are two stages in the procedure: **the administrative stage** – which allows the State to rectify the effects of the failure to fulfil an obligation at the request of the Commission – and another, **the judicial stage**, before the CJEU, when the State has not complied with the Commission’s request, or when the State’s action has not resolved its failure to fulfil an obligation.

Proceedings for failure to fulfil an obligation are carried out in accordance with the procedural rules established in the Rules of Procedure of the CJEU which allows interim measures to be taken so as to avoid the consequences that may result from the non-suspensory effect of the proceedings and the large amount of time involved in resolving a matter in the Court.

C. Proceedings for non-compliance with a judgment of the Court of Justice for failure to fulfil an obligation (Article 260 of TFEU)

This rule introduces two changes:

- In the first place, the procedure has been simplified for cases involving non-compliance with a judgment of the CJEU: when the Commission considers that the State has not adopted the measures needed to comply with the judgment it may bring the matter before the Court, after giving the State the required time to submit its observations. The Commission must specify the amount of the lump sum or compulsory penalty payment to be paid by the Member State.
- In the second place, when the Commission brings an action against a Member State resulting from its failure to fulfil its obligation to notify measures for transposing a directive, it may, if it considers it appropriate, specify the amount of the lump sum or compulsory penalty payment (Article 260 (3)).

I. Case Law

- [Case 293/85](#), *Commission v Belgium* [1998] 305
- [Case 57/65](#), *Lütticke v Commission* [1966] ECR I-00205

- [Case 309/84](#), *Commission v Italy* [1986] ECR 599
- [Case 104/86](#), *Commission v Italy* [1988] ECR I- 01799
- [Case C-304/02](#), *Commission v France* [2005] ECR I-06263

D. Proceedings for failure to act

I. Object

Proceedings for failure to act control the inaction of the institutions (European Parliament, European Council, Council, Commission and the European Central Bank) bodies or agencies of the EU and enable the Court of Justice to declare that that inactivity corresponds to an infringement of the Treaties (Article 265 TFEU).

(1) Actions that can be brought

Where there is incompliance with an obligation to act under the EU rules.

(2) Parties

a. Standing to bring proceedings

- Preferential Plaintiffs: States, Institutions, and the European Central Bank;
- Natural and Legal Persons: may bring an action when an institution has failed to address an act to them, and this obligation is imposed on them by EU law, unless the act is a Recommendation or Opinion (end of Article 265 TFEU).

b. Capacity to be sued

The European Parliament, the European Council, the Council and the European Central Bank for inaction, or bodies and agencies of the EU, which have been called upon to act and have not done so (Article 265 (2) TFEU).

c. Procedure

The institution, body or agency in question must be called upon to act within a time period of two months, by the interested party, as a possible future plaintiff. If the institution, body, or agency has not defined its position by the end of the two-month time limit, the action may be brought within a further period of two months.

The proceedings before the Court of Justice must follow the same procedural rules established by the Rules of Procedure of the CJEU.

Judgments in proceedings for failure to act

- [Case 95/86](#) Ferriere San Carlo v Commission [1987] ECR I-01413
- [Case C-72/90](#) Asia Motor France v Commission [1990] ECR I-02181
- [Case 25/85 R](#) Nuovo Campsider v Commission [1986] ECR I-1531

E. Plea of Illegality (Article 277 TFEU)

I. Definition

A plea of illegality allows the illegality of a rule (act of general application) of an institution, body or agency to be challenged indirectly. That is, instead of direct proceedings against an illegal rule, the same rule can be contested by allowing the act applying it to be challenged.

(1) Characteristics

- This procedure is not for separate proceedings since it relies on the existence of another procedure or proceedings underway before the CJEU or the General Court;
- It is incidental in nature.

(2) Object

The object of a plea of illegality that is made by a party within main proceedings brought before the CJEU or the General Court is to prevent the application of an act considered to be illegal by virtue of some defect, and so that it does not produce effects. The grounds that can be argued are those of invalidity provided for by Article 263 of the TFEU.

(3) Parties

a. Standing to bring the proceedings

Any party to the dispute has standing to bring the matter before the Court. Account must be taken of the standing to bring an action for annulment (Article 263).

b. Capacity to be sued

Any institution, body or agency that has drafted a rule, whose inapplicability is being sought, has the capacity to have proceedings brought against it.

c. Time limits

The time limit is provided for by Article 263 (two months as of the date of publication of the measure, or of its notification, or of the day on which it came to the knowledge of the interested party).

d. Effects

Its effect is to prevent an act with a flaw (as mentioned in Article 263), but which has not been annulled by means of an action for annulment, from producing effects and being applied.

e. Case Law

- [Case 33/80](#), Renato Albini v Council and Commission [1981] ECR 02141
- [Joined Cases 41/70 to 44/70](#), NV International Fruit Company and Others v Commission [1981] ECR 00411
- [Case C-258/89](#), Kingdom of Spain v Commission [1991] ECR I-03977
- [Case T-82/96](#), ARAP and others v Commission [1999] ECR II-01889

V. EFFECTS OF THE DECISIONS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

1. Introduction

The judicial organisation of the European Union is “complex” insofar as the judicial control regarding the application of Community rules is divided among the national courts and the Court of Justice of the EU, and considering that the latter body consists of the Court of Justice, the General Court and the Court of the Civil Service in accordance with Article 19 (1) TEU. While the Court of justice guarantees the uniform interpretation of EU law, the national courts are obliged to apply the Community rules. The fundamental basis for this premise can be found in Article 19(1(2)) of the TEU (*Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law*) and Article 274 of the

TFEU (*Save where jurisdiction is conferred on the Court of Justice of the European Union by the Treaties, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States*). An example of this is the regulation of the reference for a preliminary ruling which has become a vehicle for connecting the two legal orders: that of the State and of the Union.

Nonetheless, the separation between the tasks of the Community Courts and the national courts is necessary to make EU law effective. For that reason, both the national courts and the Court of Justice are called upon to contribute directly and reciprocally towards the uniform application of Community law in the European Union.

Characteristics of the jurisdiction of the Court of Justice of the European Union are:

- a) The court has mandatory jurisdiction, meaning that not only can natural persons, legal persons, States, institutions, bodies and agencies of the EU bring an action before it unilaterally, but its jurisdiction is exclusive as far as any other solution for the dispute is concerned.
- b) Thus, and as demonstrated by its case law, the CJEU must address all matters that are brought before it, apart from a few exceptions.
- c) Moreover, it decides disputes that arise between natural persons or legal persons and the institutions, having direct access to the General Court. This characteristic distinguishes the Union's Court System, as a supra-national organisation, from traditional international courts where citizens cannot participate in the proceedings.
- d) Judgments are binding and must be enforced in all Member States due to the direct effect of Community law.

There is no doubt that the Union's court system is "sui generis" in nature since it is not influenced by traditional international courts or State courts. It is "half-way between an international system and the embryo of a federal system" and this is demonstrated by the enforceability of judgments of the CJEU.

A. Effects

(1) Effects of judgments in actions for annulment

A judgment of the Court of Justice that resolves an action for annulment, when the act concerned is judged to be contrary to EU law, declares the act to be null and void (Articles 263 and 264 TFEU). Nonetheless, the Court can specify which of the effects of the annulled

act shall be considered as definitive (Article 264 (2) TFEU). Thus, there can be total or partial annulment of the act.

On the other hand, this decision constitutes a new legal situation and creates a set of relationships and legal situations that change those that gave rise to, or were the starting place for the proceedings for annulment to have the act and its effects declared void, and therefore inexistent.

Nullity is *ipso facto* retroactive. It is as if the act had never existed so the effects of the act also won't have legal form, save those which the judgment considers should be maintained and safeguarded (**Case 89/96, Portuguese Republic v Commission, Rec. 1999**).

To guarantee the elimination of the act affected by a legal flaw that makes it and its effects void, it is not always enough to have the court declare the act to be void. The institution, organ or agency from which the act originated may be obliged to take measures that enforce the judgment of annulment (**Judgment 23 February 1961, De Gezamenlijke Steenkolenmijnen in Limburg v High Authority**).

Such an enforcement activity:

- must re-establish the legal situation to what it was before the annulled act became valid (**Judgment of CJEU 25 May 1993, Case 199/91, Foyer Culturel du Sart-Tilman v Commission, Rec. 1993**): *(...) the Court may only annul the measure in dispute or dismiss the application and cannot therefore order an institution to pay a sum of Money*"; Case 415/96, Kingdom of Spain v Commission, Rec 1998, *"It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure*;
- will constitute the enforcement activity of the judgment for annulment and which, in replacing it, must not suffer any irregularities (**Case 188/92, TWD Textilwerke Deggendorf**).

When an institution or body neglects to rectify an annulled act, the appropriate means to obtain a declaration to oblige a party to act is an action for failure to act (**Judgment 26 de April 1988, Case 215/1986, Asteris AE and others and the Greek Republic v the Commission**).

(2) Effects of the Judgment in proceedings for failure to act

Proceedings for failure to act are based on the failure of an institution, body or agency of the Union to act and the objective of the judgment is to sanction an illegal failure to act or to take a decision that constitutes an infringement of the Treaties (Article 265 TFEU).

Though the court can oblige the affected body or institution to act, it cannot oblige it to carry out a particular activity (**Judgment 18 November 1970, Case 15/70, Chevalley v Commission**), nor can it decide the measure it should take.

In Article 266 the TFEU establishes the same form for enforcing judgments in both in actions for annulment and for judgments in actions for failure to act. The institution, body or agency which unlawfully failed to act, is obliged to take measures for enforcement, unless Article 340 (responsibility of the Union) is applicable. The Union must make reparation for all loss or injury arising as a consequence of its non-contractual liability, should the inaction continue, despite the judgment. That is, the affected party can make a claim for damages as a result of non-compliance with a judgment that declared the act to be unlawful.

(3) Effects of the judgment in proceedings for failure to fulfil an obligation

To bring proceedings for failure to fulfil an obligation it is necessary to have a prior well-founded opinion of the Commission on the matter (Articles 258 and 259 of the TFEU).

Consequently, when the Commission considers that a State may have failed to fulfil one of its obligations under the Treaties, it shall produce a well-founded opinion, after having given the State an opportunity to present its observations. If the State does not comply with the well-founded opinion of the Commission within the time period specified by the latter, the matter can go before the Court of Justice of the European Union.

On the other hand, if it is a Member State that claims another Member State has failed to fulfil its obligations, it refers the matter to the Commission and once the procedures outlined above have been carried out, proceedings for failure to fulfil an obligation can also be brought before the court.

A particularity of this action is that it can be resolved in two ways by the court. Thus, once the proceedings have come to an end, the court through its decision, can declare non-compliance with an obligation and the State must implement the measures necessary to enforce the judgment.

If the judgment is not complied with, the Commission can bring this new situation before the court but only after it has heard the observations of the affected State. The Commission

should indicate the quantity of the lump sum or the compulsory penalty payment that the State should pay Article 260 (2) of the TFEU).

Article 260 (3) of the TFEU regulates a particularity of the action for failure to fulfil an obligation regarding a State's failure to notify measures for transposing a directive to the Commission. The Commission should follow the procedure provided for by Article 258 of the TFEU and may indicate, when necessary, the amount of lump sum or penalty payment to be paid by the Member State, which it considers appropriate under the circumstances. In its judgment, the Court should fix a date as of which the obligation to pay has effect (Article 260 (3)). Thus the Court must stipulate a time limit in which the State must comply with its obligation; after such time it must pay the penalty imposed.

Judgements in actions for failure to fulfil obligations are considered "final decisions" as regards the State against whom the judgment has been handed down. The State is obliged to make reparation in respect of the unlawful effects that the failure to fulfil the obligation may have had (**Judgment 17 July 1973, Case 70/72, Commission v Germany**).

Under Article 261 of the TFEU the Regulations adopted jointly by European Council and the European Parliament or by the Council, where such is allowed by the Treaties, may grant the Court full jurisdiction regarding sanctions provided for by the same Regulations.

2. Instruments and Case Law

A. Legal instruments

- Treaty of the European union
- Treaty on the Functioning of the European Union
- Rules of Procedure of the Court of Justice of the European Union

B. Case Law

- [Case 30/59](#) *Gezamenlijke Steenkolenmijnen in Limburg v Alta Autoridad* [1961] ECR 00003
- [Case 15/70](#), *Chevalley v Commission* [1970] ECR 00975
- [Case 70/72](#) *Commission v Germany* [1973] ECR 00813
- [Joined Cases 97/86, 193/86, 99/86 and 215/86](#) *Asteris AE and others and Greek Republic v Commission* [1988] ECR 02181

- [Case C-188/92](#) *TWD Textilwerke Deggendorf* [1994] ECR I-00833
- [Case C-199/91](#) *Foyer Cultural Du Stara-Tilman v Commission* [1993] ECR I-02667
- [Case C-89/96](#) *Portuguese Republic v Commission* [1999] ECR I-08377
- [Case C-415/96](#) *Kingdom of Spain v Commission* [1998] ECR I-06993

3. Trainers

Trainers should be Judges and Public Prosecutors and legal professionals such as lawyers with in-depth knowledge of the procedure in the courts and if possible with experience in Community litigation. All should have vast knowledge of EU law.

4. Trainees:

This programme should be offered not only to those working in the courts (judges, prosecutors and lawyers) but also to those working in Public Administration and who need to keep abreast of matters regarding Community litigation in their home States.

5. Methodology

A. Training Method

- Normative analysis of the Treaties as concerns their historical and legal development.
- Analysis of the case law of the Court of Justice of the European Union and national case law.
- Simulation of cases, namely references for a preliminary ruling.
- Visit to the court, attendance of a hearing and exchange of impressions with Advocates-General and Judges.

CHAPTER III

EUROPEAN HUMAN / FUNDAMENTAL RIGHTS

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I. THE LEGAL FRAMEWORK FOR FUNDAMENTAL RIGHTS PROTECTION IN THE EU

1. Introduction

Protection of human rights and fundamental freedoms is now one of the general principles of EU law, embedded in the TEU and reinforced by different legal norms at both the EU and the national level. Countries seeking to join the EU must respect human rights, as do countries which have concluded trade and other agreements with the EU.

Historically, two main regional organizations were founded in Europe after World War II: the European Union and the Council of Europe. While the EU was aimed at promoting trade and economic stability among its members, the Council of Europe was created towards the promotion of the rule of law, human rights, and democracy. The European Convention of Human Rights (ECHR), adopted by the Council of Europe in 1951, consecrates the protection of fundamental civil and political rights and provides for enforcement mechanisms of these same rights through the European Court of Human Rights (ECHR).

All EU member states are members of the Council of Europe and the legal framework for fundamental rights protection in these states is to large extent based on the standards set forth by the ECHR.

The EU foresees respect for human rights as a condition for the lawfulness of its actions, which not only obligates the European Community to refrain from violating human rights, but also to ensure that they are observed. Such recognition is articulated in various EU documents such as EU Treaties, the EU Charter of Fundamental Rights and the Charter of Fundamental Social Rights of Workers.

Human dignity, freedom, democracy, equality, the rule of law and the respect for human rights became significant values of the European Union. They are either directly embedded in legal norms themselves or indirectly, by reference to ECHR. For instance, as early as 1992, a clause was introduced in the TEU by the Treaty of Maastricht, providing that the Union shall respect fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

The fundamental rights protection system in the EU was further strengthened by the enactment of the EU Charter of Fundamental Rights (2000), the accession of the EU to the ECHR through the Lisbon Treaty (2009), and amendments to Article 6(3) of TEU.³ As primary law, the general principles of the EU law, such as those providing for the protection of human rights and fundamental freedoms and the provisions of the EU Charter of Fundamental Rights are directly and systematically applied in the CJEU's jurisprudence and may be directly invoked by EU nationals before their national courts.

Article 52 (3) of the EU Charter of Fundamental Rights makes it mandatory to respect those rights guaranteed by the European Convention on Human Rights which correspond to rights recognized by the Charter. Moreover, the EU Charter of Fundamental Rights is also inspired by international human rights instruments and the “constitutional traditions common to the Member States.”

Thus, EU member states are subject to three distinct layers of human rights protections:

- the EU Charter of Fundamental Rights;
- the European Convention of Human Rights (ECHR), and
- their own national human rights law.

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an outstanding document in a number of respects. It is an innovative instrument as it provided for the first time in the history of international law for the possibility for a citizen to bring an action against its own state before a court that had unconditional jurisdiction. Today it is an instrument which still carries

³ Article 6(3) of TEU now says: “Fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.”

remarkable influence, namely through the jurisprudence of the ECHR on matters concerning the respect for human rights by all member states of the Council of Europe.

The ECHR was created in the framework of the Council of Europe and entered into force in 1953. Fourteen (14) additional protocols have been enacted amending the Convention. Today, countries can only accede to the Council of Europe if they recognize the Convention, the obligatory jurisdiction of the Strasbourg Court and the right to individual petition. Although the ECHR and its additional protocols main objective is to provide for the protection of fundamental civil and political rights, the Convention's framework has an impact on all legal fields. Interpretation of the norms of ECHR is based mainly on the principle of proportionality between the rights of individuals and the interests of society.

Petitioning to the Court of Human Rights is subject to a number of admissibility criteria, most prominently the duty to exhaust all internal judicial remedies. Following the enlargement of the European Union, the ECHR has gradually become overwhelmed with petitions. In light of this fact, the Council of Europe has requested member states to strengthen the protection of human rights at the national level and to design more effective internal remedies.

The jurisprudence of the ECHR is very rich in the interpretation of the different aspects of human rights norms protected by the Convention. The case law of the ECHR is extremely relevant when examining administrative procedures and decisions rendered by administrative courts.

The relationship between the European Convention and national law is a matter of national law itself and of the application of the rules of general public international law, thus varying between the different member states.

2. Instruments and Case Law

A. European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No. 5)

1. Right to life (article 2)

Case Matrometteo v. Italy, 24 October 2002

Case McCann and other v. UK, 27 September 1995

Case Akman v. Turkey, 26 June 2001

Case Oyal v. Turkey, 23 March 2010

2. Prohibition of torture and inhuman and degrading treatment (article 3)

Case Tomasi v. France, 27 August 1992

Case Aksoy v. Turkey, 18 December 1996

Case Kalashnikov v. Russia, 15 July 2002

Case Soering v. UK, 7 July 1989

Case Mouisel v. France, 14 November 2002

Case Ramirez Sanchez v. France, 4 July 2006

Case Herczegfalvy v. Austria, 24 September 1992

Case Mamatkulov and Askarov v. Turkey, 4 February 2005

Case Salah Sheek v. the Netherlands, 11 January 2007

Case Ashot Harutyunyan v. Armenia, 15 June 2010

Case V.D. v. Romania, 16 February 2010

Case Kashavelov v. Bulgaria, 20 January 2011

Case Dobri c. Roumanie, 14 December 2010

3. Prohibition of slavery and forced labour (article 4)

Case De Wilde, Ooms and Versyp v. Belgium, 18 June 1971

Case Siliadin v. France, 26 July 2005

Case Rantsev v. Cyprus and Russia, 7 January 2010

4. Right to liberty and security (article 5)

Case Guzzardi v. Italy, 6 November 1980

Case Bouamar v. Belgium, 29 February 1988

Case Kurt v. Turkey, 25 May 1998

Case Schiesser v. Switzerland, 4 December 1979

Case Skoogström v. Sweden, 2 October 1984

Case Lawless v. Ireland, 1 July 1961

Case Brannigan and McBride v. UK, 28 May 1993

Case Toth v. Austria, 12 December 1991

Case Weeks v. UK, 2 March 1987

Case M v. Germany, 17 December 2009

Case Khodorkovskiy v. Russia, 31 May 2011

5. Right to a fair, speedy and impartial trial (article 6)

Case Colozza and Rubinat v. Italy, 12 February 1985

Case Hausschildt v. Denmark, 24 May 1989

Case Incal v. Turkey, 9 June 1998

Case Pisano v. Italy, 24 October 2002

Case Engel and others v. the Netherlands, 8 June 1976

Cases Scordino, Riccardi Pizzati, Music, Giuseppe Mostacciuolo, Coccharella, Apicell, Ernesto Zullo and Giuseppa and Orestina Procaccini v. Italy, 29 March 2006

Case Eckle v. Germany, 15 July 1982

Cases Lutz, Englert, Nölkenbockhoff v. Germany, 25 August 1987

Case Brozicek v. Italy, 19 December 1989

Case Goddi v. Italy, 9 April 1984,

Case Stagno v. Belgium, 7 July 2009,

Case Zehentner v. Austria, 16 July 2009

Case Iordan Iordanov et autres c. Bulgarie, 02 July 2009

Case Ruotsalainen v. Finland, 16 June 2009

6. Respect for private and family life (article 8)

Case Stjerna v. Finland, 25 November 1994

Case Niemietz v. Germany, 16 December 1992

Case Société Colas Est and others v. France, 16 April 2002

Case Silver and others v. UK, 25 March 1983

Case Campbell v. UK, 25 March 1992

Case Klass and others v. Germany, 6 September 1978

Case Ciubotaru v. Moldova, 27 April 2010

7. Freedom of thought, conscience and religion (article 9)

Case Kalaç v. Turkey, 1 July 1997

Case Jakobski v. Poland, 07 December 2010

Case Savez crkava “Riječ života” and Others v. Croatia, 09 December 2010

8. Freedom of expression (article 10)

Case Handyside v. UK, 7 December 1976

Case Lingens v. Austria, 8 July 1986

Case Oberschlick v. Austria (no.2), 1 July 1997,
 Case Lehideux and Isorni v. France, 23 September 1998
 Case Jersild v. Denmark, 23 September 1994
 Case Müller and others v. Switzerland, 24 May 1988
 Case of von Hannover v. Germany, 24 June 2004
 Case Verein gegen Tierfabriken v. Switzerland (no. 2), 30 June 2009

9. Freedom of assembly and association (article 11)

Case Ezelin v. France, 26 April 1991
 Case Alekseyev v. Russia, 21 October 2010

10. Right to effective remedy (article 13)

Case Kudla v. Poland, 26 October 2000
 Case Payet v. France, 20 January 2011

11. Prohibition of discrimination (article 14)

Case Kiyutin v. Russia, 10 March 2011

B. First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952 (ETS No. 9)

- Protection of property (article 1)

Case Hirst v. UK (no. 2), 6 October 2005
 Case Valkov and Others v. Bulgaria, 25 October 2011,
 Case Moskal v. Poland, 15 September 2009.

C. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 16 September 1963 (ETS No. 046)

- Prohibition of imprisonment for debts (article 1)
- Freedom of movement within the territory of a contracting party (article 2)
 Case Raimondo v. Italy, 22 February 1994
- Prohibition of expulsion of a country's own nationals (article 3 para.)

- Freedom of entry for a country's nationals (article 3 para. 2)
- Prohibition of collective expulsion of foreigners (article 4)

D. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, 28 April 1983 (ETS No.: 114)

- Abolition of the death penalty other than in times of war (articles 1 and 2)

E. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984 (ETS No.: 117)

- Procedural guarantees in cases of expulsion of a foreigner (article 1)
- Right to a judicial review for first instance judicial decisions in criminal cases (article 2)

Case Hubner, 31 August 1999

- Right to damages in case of erroneous judicial decisions in criminal cases (article 3)
- Ne bis in idem (article 4)

Case Gradinger v. Austria, 23 October 1995

- Equality between man and women concerning marriage, during marriage and in the moment of its dissolution (article 5)

F. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 2000 (ETS No.: 177)

- Prohibition of discrimination of any kind (article 1)

3. Trainers

Trainers should be selected among individuals with a broad knowledge of human rights protection system at the international and national levels. They should preferably be members of the European Court of Human Rights, the Council of Europe or international human rights organizations, as well as international scholars.

4. Trainees

With fundamental rights as one of the most vital issues in the European legal system, both judges and prosecutors, regardless of their status, as well as trainee judges and prosecutors, should be offered training in this field.

5. Methodology

A. Training Method

Taking into consideration the nature and importance of fundamental rights in Europe, all training methods (courses, basic and specialized seminars, workshops, study visits to the ECHR and distance e-learning courses) should be used.

B. Complementary e-Learning

Complementary e-learning might prove useful in the teaching of fundamental rights protection. An e-learning platform already exists under: <http://moodle.stoas.nl/help>

C. Priority

Basic seminars should have top priority. Specialized seminars and workshops should be considered of priority level. Study visits are recommended.

D. Format

Basic seminars could take place at the local, regional and national level, while specialized seminars should be carried out at the transnational and EU-wide level.

II. THE RELATIONSHIP BETWEEN THE ECHR AND EU LAW

1. Introduction

Whereas all EU member states are also parties to the ECHR, the EU itself is currently not. Even though the EU is founded on the respect for fundamental rights, the observance of which is ensured by the CJEU, the ECHR and its judicial mechanism do not formally apply to EU acts.

On the other hand, all member states of the EU, as parties to the Convention, have an obligation to respect the ECHR even when they are applying or implementing EU law. It is for the ECHR to pronounce itself on the question of which fundamental rights standards apply when EU member states transfer part of their competences to the EU level and if this transfer may result in a loss of fundamental rights protection on account of the EU not being itself a party to the Convention.

This paradox may be rectified through the EU's accession to the Convention. This possibility has been the subject of long and difficult discussions. In an Opinion of 1996, the CJEU held that, according to Community law at that time, the Communities lacked competence to adhere to the European Convention.

By the adoption of the Treaty of Lisbon, EU's accession to the ECHR was converted into a legal obligation under Article 6, paragraph 2⁴ of the Treaty of Lisbon, which entered into force on 1 December 2009.

On 26 May 2010, the Committee of Ministers of the Council of Europe gave an ad-hoc mandate to its Steering Committee for Human Rights to elaborate with the EU a legal instrument which would serve as the basis EU's accession to the ECHR. Prior to the EU's accession, a number of details need to be clarified, such as the question of (a) whether there should be an 'EU' judge and how this person would be appointed or elected, (b) how Member States can be sued alongside the EU for human rights' breaches, and (c) how the enforcement of judgments against the EU may be ensured. The EU will accede to the ECHR once the accession agreement has entered into force, which requires its ratification by all states parties to the ECHR and by the EU itself.

⁴ Article 6 (2) of TEU says: "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties."

EU adherence to human rights conventions has both internal and external consequences. Internally, the convention becomes an integral part of the European Union legal order and it may be deemed to contain provisions which should be recognized by EU Courts as producing direct effect. Externally, the EU makes a legally binding commitment *vis-a-vis* the other Contracting Parties, including third states which are not members to the EU. In this respect, adherence becomes a part of the Union's treaty relations and more generally of its foreign policy agenda.⁵

EU's accession to the ECHR will strengthen the protection of human rights in Europe, by submitting the EU's legal system to independent external control. It will complete the EU system of fundamental rights protection.

2. Instruments and Case Law

EU accession to the ECHR is required under Article 6 of the Lisbon Treaty and Article 59 of the ECHR, as amended by the Protocol 14. The accession agreement is still at the negotiations-stage (as of April 2012).

Case law of the CJEU, referring to the ECHR:

- [Case C-400/10 PPU McB](#), judgment of 5 October 2010, para. 53-54;
- [Joined Cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation](#), judgment of 3 September 2008.

Case law of the ECHR on the obligations of EU member states under the ECHR:

- Case *Matthews v. United Kingdom*, application no. 24833/94, judgment of 18 February 1999;
- Case *Bosphorus AS v. Ireland*, application no. 45036/98, judgment of 30 June 2005;
- Case *Cooperative Producentenorganisatie van de Nederlandse Kokkelvisserij v. the Netherlands*, application No. 13645/05, decision as to the admissibility of 20 January 2009.

3. Trainers

Trainers should be international experts and scholars, with considerable knowledge of both EU law and the ECHR framework.

⁵ A.Rosas, *Is the EU a human rights organization?*, working paper of CLEER 2011/1, T.M.C. Asser Institute, p.9, http://www.asser.nl/upload/documents/4272011_112603CLEER%20WP%202011-1%20-%20ROSAS.pdf

4. Trainees

Training is recommended for senior judges.

5. Methodology

A. Training Method

Training should be offered through specialized seminars organized at the local, regional and national levels.

B. Complementary e-Learning

Complementary e-learning is not necessary.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Format EU-wide.

III. THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

1. Introduction

The European Union Agency for Fundamental Rights (FRA) is an advisory body of the European Union based in Vienna, Austria. It was established in 2007 by a Regulation No. 168/2007. Its aim is to ensure that fundamental rights of people living in the EU are protected. FRA's scope of activities includes collecting evidence about the status of fundamental rights across the European Union and providing advice, based on such evidence,

on how to improve the existing situation, as well as informing people about their fundamental rights. The FRA achieves its objectives in three ways:

- collecting and analysing objective, reliable and comparable data on a variety of fundamental rights issues in the European Union. Based on this information, the FRA formulates advice about how to better respect the fundamental rights of those living in the European Union,
- networking with partner organisations and ensuring that the research carried out by the FRA is relevant to their needs, that it complements the work of other organisations and that the research findings reach the relevant actors,
- communicating its evidence-based advice to partner organisations and the general public and raising awareness of fundamental rights.

Although the FRA offers information to individuals about how and where to enforce their rights, it cannot examine or issue a decision on individual complaints. According to its mandate, the agency can only point individuals to the appropriate channels where they can seek assistance, at the national, European and international levels.

FRA focuses on the situation of fundamental rights in the EU and its 27 Member States. Candidate countries and countries which have concluded a stabilisation and association agreement with the EU can be invited to participate following a special procedure.

The agency's staff members include legal experts, political and social scientists, statisticians, and communication and networking experts. Their work is guided by the FRA Management Board. The board is responsible for defining the agency's work priorities, approving its budget and monitoring its work. Independent experts, one appointed by each Member State, two European Commission representatives and one independent expert appointed by the Council of Europe sit on the board. The Executive Board prepares the decisions of the Management Board and advises the Director. It comprises the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board and one of the representatives of the European Commission. The Scientific Committee is comprised of eleven (11) highly qualified independent people who guarantee the scientific quality of FRA's work. The fourth body of FRA is the Director. The Agency publishes on a yearly basis an Activity report which provides an account of the activities and achievements of the FRA during the previous year.

2. Instruments and Case Law

- Regulation (EC) No. 168/2007 establishing a European Union Agency for Fundamental Rights
- Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework (MAF) for the FRA for 2007-2012
- Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017 (18645/11 FREMP 115 JAI 954 COSCE 23 COHOM 299)

3. Trainers

As the issue of European Fundamental Rights is intrinsically connected with that of the European Convention on Human Rights, the trainers should have knowledge of both EU law (EU law experts) and the ECHR framework (namely, in the quality of members of the European Court of Human Rights). The third potential group of trainers is comprised of those who are active in NGOs dealing with fundamental rights (e.g. Amnesty International), including the FRA and their activities.

4. Trainees

The trainees should be practitioners who might have contact with a person whose fundamental rights have been violated, by means of discrimination, preclusion of access to justice, racism and xenophobia, data protection breaches, violations of the rights of victims of crime or of the rights of the child. This group includes, therefore, judges and prosecutors (regardless of their status as senior or junior judges/prosecutors), as well as trainee judges and prosecutors.

5. Methodology

A. Training Method

Due to the nature of this EU instrument, the most efficient training method would encompass visits to the Fundamental Rights Agency, as well as distance e-learning courses (A5-A6), during which the attendees would acquire the necessary theoretical knowledge on the FRA, enhanced by the practical knowledge acquired through the study visits.

B. Complementary e-Learning

Complementary e-learning is not necessary.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Format EU-wide.

IV. THE EU CHARTER OF FUNDAMENTAL RIGHTS

1. Introduction

Article 2 of the Treaty on European Union states that “[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

The Charter of Fundamental Rights of the EU is the first official document in the history of the EU to combine in a single text civil, political, social and economic rights. The rights listed in the Charter include the protection of personal data, the right to asylum, equality before the law and the prohibition of discrimination, equality between men and women, the rights of the child and of the elderly, as well as important social rights, such as protection against unjustified dismissal and entitlement to social security benefits and social services (*see below*). The charter brings together in one document rights which were previously scattered through a variety of legal instruments, such as national and EU legislation, as well as international conventions from the Council of Europe, the United Nations (UN) and the International Labour Organisation (ILO).

In June 1999, the Cologne European Council concluded that the fundamental rights applicable at EU level should be consolidated in a charter, in which the general principles set out in the 1950 European Convention on Human Rights and those derived from the constitutional traditions common to EU member states were to be included. In addition, the charter was to include the fundamental rights that apply to EU citizens as well as the economic and social rights contained in the Council of Europe Social Charter and the Community Charter of Fundamental Social Rights of Workers. It would also reflect the principles derived from the case law of the European Court of Justice and the European Court of Human Rights.

The charter was the result of a convention signed and ratified by a representative from each EU member state and the European Commission, as well as members of the European Parliament and national parliaments. It was formally proclaimed in Nice in December 2000 by the European Parliament, the Council and European Commission, and from that moment onward, it became a point of reference in case law of the CJEU. Since the entry into force of the Treaty of Lisbon on 1 December 2009, the Charter has acquired binding legal force and has attained, like all other EU treaties, the status of primary law. As a result, all acts by EU institutions must be in conformity with the rights codified in the Charter and all EU Member States must respect the Charter rights when in their implementation of EU law. The Charter of Fundamental Rights contains a preamble and 54 Articles, grouped in seven chapters:

Chapter I: dignity (human dignity, the right to life, the right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labour);

Chapter II: freedoms (the right to liberty and security, respect for private and family life, protection of personal data, the right to marry and found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and the right to engage in work, freedom to conduct a business, the right to property, the right to asylum, protection in the event of removal, expulsion or extradition);

Chapter III: equality (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities);

Chapter IV: solidarity (workers' right to information and consultation within the undertaking, the right of collective bargaining and action, the right of access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people at work, family and professional life, social

security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection);

Chapter V: citizens' rights (the right to vote and stand as a candidate at elections to the European Parliament and at municipal elections, the right to good administration, the right of access to documents, European Ombudsman, the right to petition, freedom of movement and residence, diplomatic and consular protection);

Chapter VI: justice (the right to an effective remedy and a fair trial, presumption of innocence and the right of defence, principles of legality and proportionality of criminal offences and penalties, the right not to be tried or punished twice in criminal proceedings for the same criminal offence);

Chapter VII: general provisions.

The Charter applies to the European institutions, subject to the principle of subsidiarity, and may under no circumstances extend the powers and tasks conferred on them by the Treaties. The charter also applies to all EU member states while implementing EU law. If any of the rights correspond to rights guaranteed by the European Convention on Human Rights, the meaning and scope of those rights is to be the same as defined by the convention, although EU law may provide for a more extensive protection (*see* Chapter IV p. 2). Any of the rights derived from the common constitutional traditions of EU member states must be interpreted in accordance with those traditions.

2. Instruments and Case Law

- The Charter of Fundamental Rights of the EU

CJEU case law concerning fundamental rights is very rich, the following cases being seminal in the Court's interpretation and application of the Charter:

- Art. 1 - Human dignity
[Case C-303/06](#) *S. Coleman vs. Attridge Law and Steve Law* [2008] ECR I-5603, and the [Opinion of the Advocate General](#) Poiares Maduro, of 31 January 2008
[Joined Cases C 411/10 and C 493/10](#), *N.S. (C-411/10) v. Secretary of State for the Home Department M.E. et al (C-493/10) v. Refugee applications Commissioner et al* [2011] ECR I-0000

- Art. 2 - Right to life

[Case C-467/10](#) *Baris Akyüz v. Germany* [2012] ECR I-00000

- Art. 3 - Human integrity

[Case C-467/10](#) *Baris Akyüz v. Germany* [2012] ECR I-00000

- Art. 4 - Torture

[Joined Cases C 411/10 and C 493/10](#), *N.S. (C-411/10) v. Secretary of State for the Home Department M.E. et al (C-493/10) v. Refugee applications Commissioner et al* [2011] ECR I-0000

- Art. 7 - Private and family life

[Case C-145/09](#) *Tsakouridis* [2010] ECR I-0000

[Case C-208/09](#) *Ilonka Sayn Wittgenstein v Landeshauptmann von Wien* [2010] ECR I-00000

[Case C-306/09](#) *I.B.* [2010] ECR I-0000

[Case C-400/10](#) *PPU J. McB v L.E.* [2010] ECR I-00000

[Case C-497/10](#) *PPU Barbara Mercredi v Richard Chaffe* [2010] ECR I-nyr

[Case C-256/11](#) *Murat Dereci and Others v Bundesministerium für Inneres* [2011] ECR I-0000

[Joined Cases C-483/09 and C-1/10](#) *Criminal proceedings against Magatte Gueye and Valentín Salmerón Sánchez, intervenor X and Valentín Salmerón Sánchez (C-483/09) and intervenor Y (C-1/10)*, [2011] ECR I-000 and [Opinion of the Advocate General Kokott, 12 May 2011](#)

[Case C-540/03](#) *Parliament v Council* [2006] ECR I- 05769

[Case C-543/09](#) *Deutsche Telekom AG v Germany* [2011] ECR I-00000

[Case C-578/08](#) *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2010] ECR I-01839

- Art. 8 - Personal data

[Case C-101/01](#) *Criminal Proceedings against Bodil Lindqvist* [2003] ECR I-12971

[Case C-104/10](#) *Patrick Kelly* [2011] ECR I- 00000

[Case C-360/10](#) *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV* [2012] ECR I-00000

[Case C-543/09](#) *Deutsche Telekom AG v Germany* [2011] ECR I-00000

[Joined Cases C-92/09 and C-93/09](#) *Volker und Markus Schecke GbR (C 92/09) and Hartmut Eifert (C-93/09) v Land Hessen* [2010] ECR I-00000

- Art. 11 - Expression and information

[Case C-101/01](#) *Criminal Proceedings against Bodil Lindqvist* [2003] ECR I-12971

[Case C-163/10](#) *Criminal Proceedings against Aldo Patricello* [2011] ECR I-00000

[Joined Cases C-244/10 and C-245/10](#) *Mesopotamia Broadcast A/S METV (C 244/10), Roj TV A/S (C 245/10) v Bundesrepublik Deutschland* [2011] ECR I-00000

[Case C-360/10](#) *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v. Netlog NV* [2012] ECR I-00000

[Case C-421/07](#) *Criminal proceedings against Frede Damgaard* [2007] ECR I-02629

- Art. 12 - Assembly and association

[Joined Cases T-217/03 and T-245/03](#) *Fédération nationale de la coopération bétail et viande (FNCBV) (T-217/03) and Fédération nationale des syndicats d'exploitants agricoles (FNSEA) and Others (T-245/03) v Commission* [2006] ECR II-04987

- Art. 15 - Right to work

[Case C 356/09](#) *Pensionsversicherungsanstalt v Christine Kleist* [2010] ECR I-00000

[Case C-434/09](#) *Shirley McCarthy v Secretary of State for the Home Department* [2011] ECR I-00000 and [Opinion of the Advocate General Kokott, 25 November 2010](#)

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3. Trainers

Trainers ought to be people with broad knowledge of human rights protection system. As the issue of protecting fundamental rights in Europe is inseparably connected with European Convention on Human Rights, the trainers will be the representatives of European Court of Human Rights and the Council of Europe (A) as well as the Court of Justice of the EU and the General Court of the EU (B).

4. Trainees

With fundamental rights as one of the most vital issues in the European legal system, both judges and prosecutors regardless of their status and the trainees to those professions should be offered the training.

5. Methodology

A. Training Method

Taking under consideration the importance and nature of fundamental rights in Europe, it seems that all the training methods (courses, basic and specialised seminars, workshops, study visits in CJEU and distance learning courses) might be used.

B. Complementary e-Learning

Also complementary e-learning might become quite useful while teaching fundamental rights protection; this applies to all 3 methods of it.

C. Priority

Top priority. It should be noticed that most of the judges and prosecutors have not been taught fundamental rights while studying law and the Charter of Fundamental Rights is a new instrument, yet of a great- and even growing- importance.

D. Format

Format EU-wide.

CHAPTER IV

MIGRATION AND ASYLUM LAW

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I. INTRODUCTION

The development of the legal framework governing migration within the EU can be traced back to the increased integration of the EU, surpassing the early ideas of a common market. This has resulted in increased harmonisation in areas previously not considered to be within the ambit of EU law and the propagation of EU law as a distinct, but highly relevant, supranational legal order. Coupled with this is the factual change in circumstances that has seen Europe evolve into a destination for immigration, as opposed to the traditional historical status of Europe as a continent of emigration. Since the creation of the European Economic Community in 1957, free movement of workers (and certain family members) has been central to the economic development of EEC and subsequently the EU. The liberalisation of internal borders within the Union has also necessitated the need to further harmonise the control of Europe's external borders, thereby requiring the introduction of a common visa policy and further measures such as increased police and judicial cooperation. Thus the advancement of the aims of a unified Europe has a clear impact on the legal structure regarding the movement of persons.

In order to fully understand the functioning of the EU immigration and asylum system, the development from ad-hoc intergovernmental cooperation to systemised EU law must be taken into account. Initially, the legal regime in this area was characterised by international agreements between the Member States such as those concluded in Schengen and Dublin in 1985 and 1990 respectively. The introduction of the Maastricht Treaty in 1992 did little to change this legislative landscape, retaining as it did the Third Pillar, intergovernmental character of migration law. Only with the Treaty of Amsterdam was the issue of migration put

on a Community law footing with its incorporation into the First Pillar, albeit with certain limiting yet transitional safeguards.

An important distinction must be made at this point between the broad term “migration law” and the more specific “asylum law”. The concept of migration refers, per se, to the international movement of persons. This subject is characterised by the ideological dichotomy reflected in the perspectives of the actors involved. The individual is concerned with gaining access to a territory, legitimising her/his stay within that territory and, in certain cases, preventing expulsion from a state. Conversely, the state must deal with controlling borders and formulating legal standards for granting both access and residence. That might include certain minimum requirements prescribed by international, European and, in some cases, domestic law.

The notion of asylum law reflects a different background. Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. Asylum is a fundamental right, a fact recognised in Article 18 of the Charter on Fundamental Rights of the EU. States are under an international obligation, first recognised in the 1951 Geneva Convention on the protection of refugees, to grant asylum. In the EU, where there are no internal borders and countries share the same fundamental values, States must work together to find common solutions that guarantee high standards of protection for refugees. There is a need to establish procedures that are fair and effective throughout the EU and that also limit the potential for abuse to the greatest extent possible. With this in mind, the EU States have committed to establishing a Common European Asylum System by 2012.

II. THE EU'S COMPETENCE IN MIGRATION/ASYLUM MATTERS

1. Introduction

As a supranational organisation, the European Union only has the powers expressly conferred on it by the Treaties and hence it does not have any universal competence to legislate on all matters relating to the control of migration or asylum. Its competence is limited to the enumerated areas and aims mentioned in Title V of the Treaty on the Functioning of the European Union (TFEU) as well as Article 3 of the Treaty on the European Union (TEU). One of the most striking changes that occurred as a consequence to the coming into force of

the Lisbon Treaty was the subsuming of the old Third Pillar on Justice and Home Affairs within Title V of the TFEU. This has had the effect of assimilating the old Police and Judicial Cooperation provisions with the existing provisions of the Treaty on the European Communities dealing with migration, visas and border control. Notwithstanding this change and the broadening of the legal basis for adopting legislation on asylum and migration matters in the new Title V, the provisions on freedom of movement remain largely unaltered as do the opt-out positions of Denmark, the United Kingdom and Ireland. The Lisbon changes will have an effect on the asylum and migration areas by way of the enunciation of accession by the EU to the European Convention on Human Rights as an explicit goal. Moreover, the Charter of Fundamental Rights, with its specific reference to the right to asylum in Art. 19, has been endowed with a legally binding character.

Training content

- Basic understanding of the EU's competence in relation to migration and asylum matters
- Knowledge of the various legal instruments and their differences
- Basic understanding of the legislative procedures

A. Multi-annual Programmes

Tampere, The Hague, Stockholm programmes

To draw up policy guidelines and practical objectives for the area of Justice and Home Affairs, with a timetable for their attainment, the European Council established multi-annual programmes of action. The first of these was approved at Tampere in 1999. The European Council approved a programme of action for creating an 'area of freedom, security and justice', covering civil and criminal justice, visas, asylum and immigration, and police and customs cooperation. The 'Tampere programme' was a five-year agenda that came to an end in 2004.

The successor to the Tampere Programme was adopted in November 2004 in The Hague under the Dutch Presidency. The Hague Programme is a five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. It aims to make Europe an area of freedom, security and justice. Immigration and asylum topped the Hague agenda alongside the prevention of terrorism. EU leaders agreed to use qualified majority decision-making and co-decision in the fields of asylum, immigration and border control issues. Legal

immigration remains subject to unanimity. In the fields of migration and asylum, the Hague Programme highlighted the following key measures: creating a balanced approach to legal and illegal migration by, in particular, fighting illegal immigration and trafficking of human beings; ensuring the proper management of migration flows by cultivating greater cooperation with third countries, especially regarding readmission and returns; propose a common procedure and status for refugees; enhance operational cooperation in the field of asylum, notably by way of the European Refugee Fund. The Hague Programme also recognised the important role to be played by integration measures.

As the Hague Programme was coming to an end in 2009, the Council set-up a high level advisory group (Future Group) to provide ideas and solutions on the future of EU policy in the area of Justice and Home Affairs. On the basis of their work, the European Commission launched a public consultation in September 2008 on defining priorities for what was to be the new Stockholm Programme. The latter was finally adopted in early December 2009 and reflects the existing and future problems in the spheres of justice and internal affairs for the years 2010-2014. In the field of migration and asylum matters, the Stockholm Programme focused on the following issues:

- The creation of a common area of protection and solidarity: the objective is the establishment of a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. While Common European Asylum System (CEAS) should be based on high protection standards, due regard should also be given to fair and effective procedures capable of preventing abuse. It is crucial that individuals, regardless of the Member State in which their application for asylum is lodged, are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination. The objective should be that similar cases should be treated alike and result in the same outcome.
- Promotion of citizenship and fundamental rights: in the area of freedom, security and justice, above all, shall be an area in which fundamental rights are protected. One important aspect in this area for example is the attempt to equate the rights of migrants to those of citizens of the Union in a speedy and efficient manner.
- Any migration policy posited by the EU must account for the long-term consequences of this phenomenon on the labour markets and the social situations of the individuals and the Member States. This includes efforts to increase the mobility capabilities of migrants using concepts such as remittance transfers and circular migration.

- Consolidation of legislation in the area of immigration: taking account of the existing *acquis*, the necessary amendments must be made to extend the existing provisions so as to ensure an improved implementation and coherence.
- More effective policies on combatting illegal immigration: Applying concepts such as integrated border management and increased cooperation with third countries in the fight against trafficking, the aim is to prevent human tragedies caused in this way.
- The role of Europe in a globalised world – the external dimension: an implementation of the objectives of the Stockholm Programme cannot be successfully implemented without accounting for the external dimension of the EU's policy in the area of freedom, security and justice. This policy should also be integrated into the general policies of the EU and should be coherent with all other aspects of the EU's foreign policy. This is reflected in the desire to consolidate, develop and implement a Global Approach to Migration.

To implement the Stockholm Programme, the Commission has published an Action Plan.

Training content

The multi-annual programmes provide for the key topics that the EU will address in the area of justice and home affairs in the respective periods. The programmes serve as guidelines for evolving and forthcoming measures to be expected in this field and therefore, potential topics for training can already be assessed. Furthermore, the development and content of the programmes serve as important background knowledge to better understand the developing area of freedom, security and justice and the role to be played by migration and asylum within this broader framework.

B. Pact on Immigration and Asylum

On 15 and 16 October 2008, Europe's leaders set their seal on the European Pact on Migration and Asylum (1), which was first approved by the Justice and Home Affairs Council on 25 September 2008. This Pact, based on clear political commitments, served an important political purpose: generating renewed political momentum around the issue of migration management, an area where Europe's citizens have high expectations and where Europe can demonstrate its ability to respond to citizens' concerns. Furthermore, the Pact can help Member States to improve their coordination efforts and ensure timely delivery of the policy objectives it sets. The Pact represents an attempt to face up to the realisation that the reform of Europe's migration and asylum framework is a task more onerous than first assumed. It tones

down the ambitions of the 27 member states. The document noted that the future EU asylum support office, which will not have investigatory or decision making authority, will foster "the harmonisation of practices and procedures and consequently national decisions" on asylum applications. The approach followed has seen its scope limited to encouraging "coherence" of practices, procedures and decisions. This approach, clearly less ambitious, may have the result that it is faster and allows for more rapid harmonisation. The Commission has the considerable task of making proposals for the introduction, "if possible in 2010 and no later than 2012" of a single asylum procedure with common guarantees.

The Pact is based on five main pillars: (1) to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration; (2) to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit; (3) to make border controls more effective; (4) to construct a Europe of asylum; and (5) to create a comprehensive partnership with the countries of origin and of transit in order to encourage synergy between migration and development. With the exception of asylum policy, all the other four components are part and parcel of Europe's Global Approach to Migration.

Training content

A proper understanding of the EU's approach to immigration and asylum requires a sound knowledge of the five pillars which the Pact aims to realise.

2. Instruments

- Treaty on the Functioning of the EU, Title V, Chapter 2, Consolidated version, OJ C 83/47, 30 March 2012, 75
- Treaty of the European Union, Consolidated Version, OJ C 83/13, 30 March 2010
- The Charter of Fundamental Rights of the EU (particularly Arts. 18 and 19), OJ C 83/389, 30 March 2010
- European Commission, Green Paper on the Future of the Common European Asylum System, COM(2007) 301 final, 6 June 2007
- Action Plan Implementing the Stockholm Programme; Brussels, 20.4.2010; COM(2010) 171 final
- The Stockholm Programme - An open and secure Europe serving and protecting citizens (OJ C 115 4/5/2010 P.1)

- JHA Trio Presidency Programme January 2010 - June 2011 (5008/10, 4/1/2010)
- The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (OJ C53/01, 3.3.2005)
- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Justice, Freedom and Security in Europe since 2005: An evaluation of The Hague programme and action plan Brussels, (COM(2009) 263 final; 10.6.2009)
- Communication from the Commission to the Council and the European Parliament: Report on Implementation of the Hague Programme for 2007 (2.7.2008; COM(2008) 373 final)
- European Pact on Immigration and Asylum, Council of the European Union, 13189/08 ASIM 68
- Communication from the Commission to the Council and the European Parliament: Report on the implementation of The Hague programme for 2006 (COM(2007) 373 final; 3.7.2007)
- Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198; 12/8/2005)
- The Hague Programme: strengthening freedom, security and justice in the European Union (16054/04; 13 December 2004)
- Communication from the Commission to the Council and the European Parliament – Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations, (COM(2004) 4002 final; 2.6.2004)
- Tampere European Council 15 and 16 October 1999 – Presidency Conclusions

3. Trainers

Recommended trainers are EU/international experts, national practitioners with expert knowledge (e.g.: immigration practitioners) and scholars.

4. Trainees

Training in this field should be addressed to practitioners with limited or basic knowledge of the issue and can be particularly recommended for junior judges and future/trainee judges.

5. Methodology

A. Training Method

The training can be carried out in the form of a basic seminar although it might not be necessary to dedicate a whole seminar to the topic. It can successfully be allocated as one part (lecture or session) of another training course, preferably, however, by way of introduction to the theme.

B. Complementary e-learning

Complementary e-learning is not necessary.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

This training can be carried out in a local, regional or national setting.

III. EUROPEAN ASYLUM SYSTEM

1. Introduction

Achieving a Common European Asylum System

Between 1999 and 2005, several legislative measures intended to further the goal of harmonising common minimum standards for asylum were adopted (see below). These specific legislative instruments serve to underpin the broader, overarching goals established in the Tampere Programme, its successor the Hague Programme and the most recent addition, the Stockholm Programme, which will be applicable until 2014. Since the publication of the European Pact on Immigration and Asylum and the Commission Green Paper on the subject

of asylum, it was made clear that the existing directives are to be viewed as a step towards creating a more coherent policy regime. This regime is referred to as the Common European Asylum System. As stated in the Policy Plan, three pillars underpin the development of the CEAS:

1. It aims to harmonise the standards of protection granted to applicants for international protection by further aligning the Member States' asylum legislation. This requires amendments to the three most important EU asylum directives: dealing with reception conditions for asylum seekers, asylum procedures and standards for qualification as refugees or persons needing international protection. The currently applicable directives create a set of minimum standards designed to ensure that applicants for international protection could be sure of the same treatment irrespective of where in Europe they made their application. The attempts to reform these instruments seek to create a set of common standards thereby removing any discrepancies that exist in the granting of protection and the form that protection might take.
2. The CEAS also puts great emphasis on the establishment of the European Asylum Support Office, charged with the task of progressively bringing all activities related to practical cooperation on asylum under its ambit, notably in relation to a common approach to Country of Origin Information and to the common European Asylum Curriculum. It will also manage the Asylum Support Teams temporarily deployed to Member States in need of support.
3. Increased solidarity and sense of responsibility among EU States, and between the EU and non-EU countries. It is necessary to improve the "Dublin" system (including Eurodac) and establish solidarity mechanisms so that adequate support, with strengthened impact, can be offered to EU States whose asylum systems are under pressure. Under this pillar, collaboration between the EU and non-EU countries will be intensified, for example through Regional Protection Programmes and Resettlement.

The legal basis for the CEAS is Article 78 TFEU, a provision which provides that measures must be adopted on the regulation of asylum in accordance with international requirements (cf. para. 1) and on the issue of specific legislative measures dealing with refugees and displaced persons (cf. para. 2). The measures envisaged in para. 2 include the legislative provisions discussed below. It should be noted that these measures apply only to those persons who make an application for asylum. The narrow understanding propagated by the relevant instruments only allows for an application based on the 1951 Refugee Convention. It does not account for claims for protection being made under other treaties such as the European Convention on Human Rights or the Convention against Torture. Human rights

considerations play a pervasive role throughout the determination of an applicant's claim for international protection and must always be borne in mind by judicial authorities. Notwithstanding this restriction, the protection of applicants is maintained by several factors built into the Directives.

A. Directive on Reception Conditions for asylum-seekers (Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers)

The Reception Conditions Directive deals with the question of what conditions and rights are applicable for the asylum seeker pending the asylum procedure. It does so by defining, and thereby harmonising, the social rights of the asylum seekers during that time period. It provides instruction on a broad range of criteria including, *inter alia*, the provision of health care, education and schooling, the material conditions experienced in the reception centres and the rights of asylum seekers with respect to information. By so doing, it represents an effort to prevent secondary migration caused by asylum seekers engaging in intra-EU migration with a view to entering a territory with more beneficial conditions. Although Member States have the discretion to extend the scope of this Directive *ratione personae*, the Directive only applies to applicants for international protection as that term is to be understood in light of the Geneva Convention from 1951. The Directive shall establish conditions within the Member States that ensure full respect for human dignity and that promote the application of Articles 1 and 18 of the Charter of Fundamental Rights of the EU.

Training content

Training on the content of this Directive should focus on:

- The objectives which the Directive seeks to achieve;
- The application of the Directive to particular groups such as asylum seekers who are being detained;
- The level of the obligations that the Directive sets

The aim of training on this legislation should be to sharpen the individual trainee's sense for the adequacy of the standards prescribed by the Directive so as to allow the trainee to assess whether these standards have been upheld by domestic measures

B. Directive on qualifications for becoming a refugee or a beneficiary of subsidiary protection status (Directive 2004/83 EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)

The Qualifications Directive, which came into force on 10 October 2006, is EU legislation dealing with the regulation of the recognition of claimants from third countries either as refugees or as persons with an entitlement to subsidiary protection. This Directive, as is also the case with the Procedures Directive (below) only apply to third country nationals meaning that a citizen of a Member State cannot avail of their protection. It introduces minimum standards which permit Member States to include standards more favourable in their domestic legislation. This Directive has two ultimate aims: 1) it aims to provide a set of common criteria by which persons who ought to be recognised as being in need of international protection can be identified. These criteria represent minimum requirements of fairness. 2) Upon recognition, the Qualifications Directive then prescribes a minimum level of benefits that apply in all Member States to those so recognised. It is necessary to understand the distinction made between “refugees” (Chapter II and IV) and “persons eligible for subsidiary protection” (Chapter VI). The Qualification Directive applies the definition for refugees as it is found in the Geneva Convention. This definition is, however, modified to take account of differences in interpretations between the Member States which existed by including a list of relevant recognition criteria. The second category comprises those applicants who do not fall within the definition of a refugee but who can show the existence of a “substantial grounds” for the belief that they would face “a real risk of suffering serious harm” in their country of origin.

Training content

Training on the content of this Directive should focus on:

- The various definitions of the term “refugee”, particularly as these have been differently interpreted and applied in the Member States
- The distinction between the refugee term found in the Geneva Convention and the concept of subsidiary protection found in EU law;
- The agents of persecution: can an applicant claim asylum if that applicant has suffered persecution at the hands of a non-state agent?

- The concept of minority status as a reason for making an application for international protection (gender, sexual orientation etc.)

One of the primary bones of contention in this area is the consistency of EU legislation with international law, in particular, the Geneva Convention.

C. Directive on Asylum Procedures (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status)

The purpose of the Procedures Directive is to lay down minimum standards of procedure that must be adopted and applied in the processing of asylum applications. It is a particularly practically focussed piece of legislation that lists a series of procedural rights that each applicant enjoys. These rights include a right to an interview, the right to appeal against the first instance decision-makers decision, the right to remain in the Member State pending the examination of the application and the right to legal assistance and representation. Any examination of an application must be individual, objective and impartial as well as being based on a full consideration of the prevailing conditions in the country of origin from which the applicant has come. This entails a further obligation on the Member State processing the application to ensure that accurate information of this nature is provided and available to the court or tribunal charged with assessing the first-instance decision.

In addition to providing applicants with these rights, the Directive also contains certain obligations on the applicant that may be further specified by the Member States. These obligations include a duty to report to the competent authorities, to hand over certain documents and to inform the authorities of certain pieces of information such as place of residence. A detailed appeals procedure is also contained in the Directive. The Procedures Directive ultimately aims to set high standards for the determination of claims in Member States and implement a series of safeguards intended to ensure the protection of asylum claimants.

Training content

Training on the content of this Directive should focus on:

- The overarching aim of achieving consistency in the decision-making process;

- The need to ensure that all applicants for international protection enjoy the right of access to a fair and effective status determination process at first and subsequent instances;
- What level constitutes appropriate minimum standards? What can the judge look at in assessing this standard?
- Taking extraordinary factors such as the particular situation of the individual applicant into account

D. 'Dublin' Regulation (Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national)

In order to determine which State is responsible for an asylum claim, the EU has set out criteria with the ultimate purpose being to ensure an expedited system of determination that will be advantageous to both the Member States and the applicant for international protection. An efficient system of allocation avoids asylum seekers being transferred from one EU State to another, with none accepting responsibility, as well as multiple or simultaneous applications by the same person in different EU States (a phenomenon known as 'asylum shopping'). The criteria are defined in the "Dublin" Regulation. In principle, an asylum application should be examined by only one EU State. The overarching rule states that the Member State into which the applicant first accessed the EU is usually the one which was most central to the applicant's entry or residence in the Union and hence responsible for processing the application. That EU State is also obliged to take back its applicants who may have moved to another EU country without permission of the authorities.

The determination of responsibility for examining an asylum application is to be made in accordance with the criteria laid down in the Regulation and in the order in which they appear:

- The principle of family unity (the EU State responsible for examining the application is the one where the applicant has a member of his/her family legally present).
- The issuance of residence permits or visas (the EU State responsible is the one which issued a residence document or a visa with the latest expiry date).

- Illegal entry or stay (the EU State responsible is the one into which the applicant entered irregularly or irregularly stayed for a period of at least five months).
- Legal entry into an EU State (if the application is lodged in an EU State where the applicant is not subject to a visa requirement, that EU State will be responsible).
- Application in an international transit area of an airport (the EU State responsible is the one where the airport is located).

If no EU State can be designated as responsible for examining the asylum application on the basis of these criteria, responsibility falls to the first EU State with which the asylum application was lodged. In addition, the Member States have the discretionary power to decide to process an application without fulfilling the aforementioned criteria.

Training content

Training on the content of this Regulation should focus on:

- The distribution/allocation mechanism envisaged by the Regulation;
- Safeguards contained in the Dublin mechanism;
- Potential dangers for applicants with respect to the principle of *non-refoulement*

E. Reform Efforts

Currently, a series of wide-ranging reform initiatives are being drafted and debated by the Member States. In the case of each of the 4 primarily legislative provisions treated of above, reform proposals have been made.

- i) The Receptions Conditions Reform Proposal has been widely criticised due to the wide discretion allowed by the Directive in a number of areas which, critics suggest, undermined the objective of creating a level playing field in the area of reception conditions. The proposal includes a number of major amendments:
 - extending the scope of the Directive's application to include those applying for subsidiary protection
 - limit the time restrictions for accessing the labour market
 - guarantee an adequate level of material reception conditions
 - ensure that detention is used only in exceptional cases and in connection with certain procedural guarantees

- ensure that mechanisms are established in order to immediately identify special needs and provide the necessary support.
- ii) The Qualifications Directive Reform Proposal reflects the findings of report into the functioning of the Directive which highlighted the high number of decisions being overturned on appeal in certain jurisdictions. Many of these can be said to be attributable to a perceived vagueness and ambiguity surrounding several concepts in the Directive which left room for widely divergent interpretations by EU States. The Draft Proposal aims to clarify certain legal concepts used to define the grounds for protection. It also attempts to eliminate differences in the level of rights granted to refugees and beneficiaries of subsidiary protection, and enhance effective access to rights already granted by the Directive by taking into account the specific integration challenges faced by beneficiaries of international protection.
- iii) The Procedures Directive Reform Proposal recognised the vague nature of many of the standards prescribed and the potential for conflicts with human rights instruments as a result. The suggested amendments provide for a single procedure for refugee and subsidiary protection status determination, they aim to enhance the efficiency of the application examination process, facilitate access to examination procedures, improve the quality of asylum decisions and ensure that an asylum applicant can appeal a decision
- iv) The most frequent criticism levied at the Dublin Regulation is the inequitable division of responsibility between the Member States. Due to a number of factors such as geographical proximity, certain Member States are under considerably more pressure to deal with a much larger number of applications for international protection. The reform Proposal aims to increase the system's efficiency and to ensure higher standards of protection for persons subject to the Dublin procedure. Moreover, in line with the 2008 Policy Plan on Asylum, the proposal seeks to ease situations of particular pressure experienced by EU States' reception facilities and asylum systems during a mass influx of refugees such as that experienced during the Arab Spring in early 2011.

Characterised by a move away from minimum standards and towards common harmonised standards, the Commission proposals are now being discussed within the European Parliament and the Council. For the Commission proposals to become EU law and replace the

current Directives/Regulation, it must first be adopted by the European Parliament and the Council. Although it is not binding law at this time, these changes are of crucial importance to trainees seeking to deepen their knowledge in this area.

Training contents

Training on the CEAS aims at familiarising trainees with the leading legislation in this area, the application of these by domestic administrative and judicial bodies and the reform efforts currently being undertaken.

In general, training should include:

- Definition of refugee in European and international law; the concept of subsidiary protection
- Basic information on the application of each of the three main Directives and the Regulation and the corresponding domestic legislative acts where applicable;
- Additional information on the application and role to be played by the Eurodac Regulation concerning the identification of applicants;
- Comparative information on the transposition of EU legislation in other Member States;
- An overview of the jurisprudence of the Court of Justice of the EU as well as relevant decisions of Member States' courts.

F. EASO

The European Asylum Support Office (EASO) was established as an independent and specialised agency of the EU and it became fully operational in mid-2011. Its headquarters are located in Valletta (Malta). It has three primary objectives:

- to develop practical cooperation among EU States on asylum by facilitating exchanges of information on countries of origin, providing EU States with support for translation and interpretation and for training of asylum officials and assisting in the relocation of beneficiaries of international protection
- to support EU States under particular pressure, in particular through the establishment of an early warning system, the coordination of teams of experts to assist in managing asylum applications and the putting in place of appropriate reception facilities
- to contribute to the implementation of the Common European Asylum System by collecting and exchanging information on best practices, drawing up an annual report

on the asylum situation in the EU and defining technical orientations on the implementation of the Union's asylum instruments.

EASO plays, as the name suggests, a support role in the EU asylum system and it does so by assisting EU States in fulfilling their European and international obligations in the field of asylum. It will play an important role in the provision of information that may be useful to decision-makers such as country of origin information.

Training content

- Scope and content of the EASO regulation
- Role of EASO within the Common European Asylum System
- Concepts of responsibility sharing and practical cooperation between the Member States

2. Instruments and Case Law

A. Basic Documents

(1) EU Documents

- Treaty on the Functioning of the EU, Title V, Chapter 2, Consolidated version, OJ C 83/47, 30 March 2012, 75
- Treaty of the European Union, Consolidated Version, OJ C 83/13, 30 March 2010
- The Charter of Fundamental Rights of the EU (particularly Arts. 18 and 19), OJ C 83/389, 30 March 2010
- Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office
- EASO Work Programme 2012, Ref. Ares(2011)1244059 - 21/11/2011
- European Commission, Green Paper on the Future of the Common European Asylum System, COM(2007) 301 final, 6 June 2007
 - Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
 - o Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers, COM (2011) 320 final. Brussels, 1.6.2011

- Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers, COM(2008) 815 final. Brussels, 3.12.2008
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
 - Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, COM(2008) 820 final. Brussels, 3.12.2008
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
 - Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, COM(2009) 551 final. Brussels, 21.10.2009
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
 - Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status COM(2011) 319 final. Brussels, 1.6.2011
 - Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection, COM(2009) 554 final. Brussels, 21.10.2009
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention

(2) Extended EU Documents

- Communication from the Commission to the European Parliament and the Council: Annual Report on Immigration and Asylum (2010) , COM (2011) 291 final. Brussels, 24.5.2011
- Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010 – 2014), COM (2010) 213 final. Brussels, 6.5.2010
- Communication from the Commission to the European Parliament and the Council on the Establishment of a joint EU Resettlement Programme, COM(2009) 447 final. Brussels, 2.9.2009
- European Pact on Immigration and Asylum 13440/08, Brussels, 24.9.2008
- Policy Plan on Asylum – An Integrated Approach to Protection Across the EU, COM(2008) 360 final. Brussels, 17.6.2008
- Green Paper on the future Common European Asylum System, COM(2007) 301 final. Brussels, 6.6.2007
- Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin System SEC (2007) 742, COM(2007) 0299
- Communication from the Commission to the Council and the European Parliament: Area of Freedom, Security and Justice: Assessment of the Tampere Programme and Future Orientations, COM(2004) 401, 2.6.2004
- European Commission, Communication from the Commission to the Council and the European Parliament "A More Efficient Common European Asylum System: The Single Procedure as the Next Step", COM(2004) 503, 17 July 2004
- Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

- Communication from the Commission to the Council and the European Parliament: On the common asylum policy, introducing an open coordination method, COM (2001) 710. Brussels, 28.11.2001
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
- Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention
- Communication from the Commission to the Council and the European Parliament Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, COM (2000) 755. Brussels, 22.11.2000
- Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund

(3) International Documents

- 1951 Geneva Convention on the protection of refugees & 1967 Protocol relating to the Status of Refugees
- UN Declaration of Territorial Asylum of 1967
- Declaration on Territorial Asylum 1977
- UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment
- UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers
- UN Guiding Principles on Internal Displacement
- ILA Principles on Internal Displacement
- UN Declaration of Human Rights of 1948 (Articles 13 & 14)
- UN Convention Against Torture of 1984 (Articles 1, 2 & 3)
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, 4 November 1950 (213 E.T.S. 222)

- Council of Europe, Committee of Ministers, Recommendation No. R (2005) 6E to Member States on Exclusion from Refugee Status in the Council of Europe, Committee of Ministers, Recommendation 1703 (2005): Protection and assistance for separated children seeking asylum
- Council of Europe, Committee of Ministers, Recommendation No. R (2004) 14E to Member States on the Movement and Encampment of Travellers in Europe
- Council of Europe, Committee of Ministers, Recommendation No. R (2004) 9E to Member States on the Concept of “ Membership in a Particular Social Group” (MPSG) in the Context of 1951 Convention
- Council of Europe, Committee of Ministers, Recommendation No. R (2003) 5 to Member States on Measures of Detention of Asylum Seekers
- Council of Europe, Committee of Ministers, Recommendation No. R (2001) 18 to Member States on Subsidiary Protection
- Council of Europe, Committee of Ministers, Recommendation No. R (2000) 9 on Temporary Protection
- Council of Europe, Committee of Ministers, Recommendation No. R (98) 13 on the Right of Rejected Asylum Seekers to an Effective Remedy against Decisions on Expulsion in the context of Article 3 of the European Convention on Human Rights
- Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities (signed in Dublin 15 June 1990, entered into force 1 September 1997) OJ C254, 19 August 1997
- Council of Europe, Committee of Ministers, Recommendation No. R (97) 22 Containing Guidelines on the Application of the Safe Third Country Concept
- Council of Europe, Committee of Ministers, Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe
- Council of Europe, Committee of Ministers, Recommendation 1236 (1994) on the right of asylum
- Council of Europe, Committee of Ministers, Recommendation No. R (84) 21 on the Protection of Persons Satisfying the Criteria in the Geneva Convention who are not Formally Recognised as Refugees

- Council of Europe, Committee of Ministers, Recommendation No.R (1984) 1 on the Acquisition by Refugees of the nationality of the Host Country
- Council of Europe, Committee of Ministers, Recommendation 773 (1976) on the situation of de facto refugees
- Council of Europe, Committee of Ministers, Resolution 70 (2) (1970) on the Acquisition by Refugees of the Nationality of their Country of Residence
- Context of Article 1F of the Convention Related to the Status of Refugees
- Council of Europe, Committee of Ministers, Resolution 14 (1967) on Asylum to Persons in Danger of Persecution

B. Case Law

(1) Court of Justice of the EU

- *Bundesrepublik Deutschland v Y and Z, C-71/11 and C-99/11 (Joined Cases)*, 5 September 2012, Directive 2004/83/EC - Minimum standards for determining who qualifies for refugee status or for subsidiary protection status - Article (2)(c) - Classification as a ‘refugee’ - Article 9(1) - Definition of ‘acts of persecution’ - Article 10(1)(b) - Religion as ground for persecution - Connection between the reasons for persecution and the acts of persecution - Pakistani nationals who are members of the Ahmadiyya religious community - Acts by the Pakistani authorities designed to prohibit the manifestation of a person’s religion in public - Acts sufficiently serious for the person concerned to have a well-founded fear of being persecuted on account of his religion - Individual assessment of the facts and circumstances - Article 4.
- *N. S. v. Secretary of State for the Home Department (C-411/10), M. E., A. S. M., M. T., K. P., E. H. v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform (C-493/10)*, [Joined Cases C-411/10 and C-493/10](#), 21 December 2011: European Union Law - Implementation of European Union law – Prohibition of inhuman or degrading treatment – Common European Asylum System – Regulation (EC) No 343/2003 – Concept of ‘safe countries’ – Transfer of an asylum seeker to the Member State responsible – Obligation – Rebuttable presumption of compliance, by that Member State, with fundamental rights)

- *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration*, [Case C-69/10](#), 28 July 2011: Directive 2005/85/EC – Minimum standards on procedures in Member States for granting and withdrawing refugee status – ‘Decision taken on [the] application for asylum’ within the meaning of Article 39 of Directive 2005/85 – Application by a third country national for refugee status – Failure to provide reasons justifying the grant of international protection – Application rejected under an accelerated procedure – No remedy against the decision to deal with the application under an accelerated procedure – Right to effective judicial review
- *European Commission v Ireland*, [Case C-431/10](#), 7 April 2011: Directive 2005/85/EC - Failure of a Member State to fulfil obligations - Minimum standards - Right of asylum – Procedure for granting and withdrawing refugee status – Failure to transpose provisions fully within the prescribed period
- *Bundesrepublik Deutschland v. Vertreter des Bundesinteresses beim Bundesverwaltungsgericht (C-57/09 and C 101/09), Bundesbeauftragter für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge (C-101/09), Joined Cases C-57/09 and C-101/09*, 9 November 2010: Directive 2004/83/EC – Minimum standards for the grant of refugee status or of subsidiary protection – Article 12 – Exclusion from refugee status – Article 12(2)(b) and (c) – Notion of ‘serious non-political crime’ – Notion of ‘acts contrary to the purposes and principles of the United Nations’ – Membership of an organisation involved in terrorist acts – Subsequent inclusion of that organisation on the list of persons, groups and entities which forms the Annex to Common Position 2001/931/CFSP – Individual responsibility for part of the acts committed by that organisation – Conditions – Right of asylum by virtue of national constitutional law – Compatibility with Directive 2004/83/EC
 - o [Opinion](#) in the case of *Germany v. B and D*, Joined Cases C-57/09 and C-101/09, by Advocate General Mengozzi, 1 June 2010
- *Nawras Bolbol v. Bevándorlási és Állampolgársági Hivatal*, [Case C-31/09](#), 17 June 2010: Directive 2004/83/EC – Minimum standards for the qualification and status of third country nationals or stateless persons as refugees – Stateless person of Palestinian origin who has not sought protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) – Application for refugee status – Refusal based on a failure to meet

the conditions laid down in Article 1A of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 – Right of that stateless person to be recognised as a refugee on the basis of the second sentence of Article 12(1)(a) of Directive 2004/83

- *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi, Dler Jamal v. Bundesrepublik Deutschland*, [Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08](#), 2 March 2010: Directive 2004/83/EC – Minimum standards for determining who qualifies for refugee status or for subsidiary protection status – Classification as a ‘refugee’ – Article 2(c) – Cessation of refugee status – Article 11 – Change of circumstances – Article 11(1)(e) – Refugee – Unfounded fear of persecution – Assessment – Article 11(2) – Revocation of refugee status – Proof – Article 14(2)
 - o [Opinion](#) in the case of *Abdulla*, joined cases C 175/08, C 176/08, C 178/08 and C 179/08 by Advocate General Mazák, 15 September 2009
- *M and N Elgafaji v Staatssecretaris van Justitie*, [Case C-465/07](#), 17 February 2009: Directive 2004/83/EC – Minimum standards for determining who qualifies for refugee status or for subsidiary protection status – Person eligible for subsidiary protection – Article 2(e) – Real risk of suffering serious harm – Article 15(c) – Serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of armed conflict – Proof
- *European Parliament v Council*, [Case C-133/06](#), 6 May 2008: Action for annulment – Common policy on asylum – Directive 2005/85/EC – Procedures in Member States for granting and withdrawing refugee status – Safe countries of origin – European safe third countries – Minimum common lists – Procedure for adopting or amending the minimum common lists – Article 67(1) and first indent of Article 67(5) EC – No power

(2) European Court of Human Rights

- *M.S.S. v. Belgium and Greece*, Grand Chamber, Application no. 30696/09, European Court of Human Rights, 21 January 2011 (affirmed the responsibility of the deporting State for all foreseeable consequences of the deportation of a person seeking international protection to another EU Member State, violation of Art. 3 (prohibition of torture, inhuman or degrading treatment))

- *Salah Sheekh v Netherlands*, Third Section, Application no. 1948/04, European Court of Human Rights, 11 January 2007 (Art. 3 can amount to protection against *non-refoulement*, dealt with the concept of internal flight alternative)
- *Said v Netherlands*, Second Section, Application no. 2345/02, European Court of Human Rights, 5 July 2005 (deals with issues going to the level of documentary and other evidence necessary in making a claim in order to assert credibility, violation of Art. 3 (prohibition of torture, inhuman or degrading treatment))
- *Kalashnikov v. Russia*, Third Section, Application no. 47095/99, European Court of Human Rights, 15 July 2002 (deals with conditions and length of detention and length of criminal proceedings, violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) and a violation of Article 13 (right to an effective remedy))
- *Dougoz v. Greece*, Third Section, Application no. 40907/98, European Court of Human Rights, 6 March 2001 (deals with conditions and length of detention, violation of Article 5 (lawfulness and length of his detention and the lack of remedies under domestic law))
- *T.I. v. United Kingdom*, Third Section (Decision on admissibility), Application No. 43844/98, European Court of Human Rights, 7 March 2000 (applicant complains that the United Kingdom's conduct in ordering his removal to Germany, from where he will be summarily removed to Sri Lanka, violates Articles 2, 3, 8 and 13 of the Convention)
- *Ahmed v. Austria*, Council of Europe, Application no. 71/1995/577/663, European Court of Human Rights, 17 December 1996 (deals with deportation of Somali national convicted of criminal offence, applicant alleged that if he were to be deported to Somalia, he would certainly be subjected there to treatment prohibited by Article 3 of the Convention, complaints under Article 5 and 13 of the Convention)
- *Chahal v. United Kingdom*, Grand Chamber Application no. 22414/93, European Court of Human Rights, 11 November 1996 (expressed a limitation on the capacity of states to use considerations of national security as a reason for denial of an application and deportation, absolute nature of Art. 3 protection)

(3) Domestic Courts

- *R v. Secretary of State for the Home Department, Ex parte Adan, Ex parte Aitseguer*, (2001) 2 WLR 143, 19 December 2000 (UK House of Lords) R v. Uxbridge Magistrates Court and Another, Ex parte Adimi [1999] EWHC 765 (Admin), [2001] Q.B. 667, 29 July 1999 (England and Wales High Court, Administrative Court)
- *Horvath v. Secretary of State for the Home Department* [2000] INLR 15, 6 July 2000 (UK House of Lords)
- *Danian v. Secretary of State for the Home Department* [2000] Imm AR 96, 28 October 1999 (England and Wales Court of Appeal)
- R v. Uxbridge Magistrates Court and Another, Ex parte Adimi [1999] EWHC 765 (Admin), [2001] Q.B. 667, 29 July 1999 (England and Wales High Court, Administrative Court)

3. Trainers

Recommended trainers are EU/international experts, national practitioners with expert knowledge (e.g.: immigration practitioners) and scholars. Trainers should have knowledge both on EU law and on ECHR. Staff of EU institutions might also be engaged as trainers.

4. Trainees

Awareness and basic knowledge of this area of law are essential. Senior judges and prosecutors as well as those judges serving on specialised panels should have specialised knowledge of the relevant case law of the CJEU, the ECHR and relevant domestic courts.

5. Methodology

A. Training Method

A comprehensive training course offers the best opportunity to any judicial staff wishing to get better acquainted with this issue. Alternatively, the training can be carried out in the form of a series of seminars each dealing with a particular aspect of the legislative framework or, alternatively, over a more sustained training period (e.g. one week) to allow for greater detail.

The training methods that might therefore be considered are training courses, basic seminars or distance learning courses.

B. Complementary e-learning

Training on each legal instrument can be completed by e-learning. This might consist of a blended mixture of text, multimedia and interactive components which would allow participants to work with the primary texts.

C. Priority

Training on this topic is recommended as an absolute priority in this area of law. This is reflected in the aims of the Stockholm Programme- In particular, upon the adoption of the reform proposal measures training on these new instruments should have priority.

D. Format

This training should take place at local, regional and national level.

IV. IRREGULAR MIGRATION

1. Introduction

Irregular immigration, by its very nature, is difficult to quantify and this is also the case in the EU. However, the European Commission provides information on certain indicators that are useful as guidance: in 2009, the number of irregularly staying non-EU nationals apprehended in the EU was about 570 000 (7 % less than in 2008). It is a simple reality that a credible migration policy within the common European area of Freedom Security and Justice is crucial and establishing this must a core function of the Member States in cooperation with the organs of the EU.

This area of law is also closely intertwined with yet nonetheless often distinct from considerations of criminal law. In many cases, migrants who have entered the EU clandestinely via land and sea routes, or those who have acquired false travel documents, have

done so with the assistance of criminal organisations. Many of these migrants also maintain vital links to these criminals after their arrival in the EU for reasons of support or even under duress. In an effort to stop human trafficking networks and smugglers, the EU has established rules for action against criminals involved in trafficking in human beings, considerable sanctions for employers who knowingly engage the services of trafficked people as well as the creation of better assistance for victims. In 2010, the Commission appointed an EU-Anti-trafficking Coordinator to improve coordination and consistency between actions by EU institutions, EU agencies, EU States, non-EU countries and international players in the fight against trafficking. In addition, an EU anti-trafficking website has been launched, with the aim of providing a one-stop shop for practitioners, civil society, academics and others interested in the problem of trafficking. These initiatives focus on the phenomenon of trafficking of human beings. This is to be distinguished from smuggling migrants.

a. FRONTEX

1. Introduction

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), established in 2004 and based in Warsaw, facilitates and improves the application of existing and future EU measures relating to the management of external borders. It complements EU States' border management systems and contributes to the freedom and security of EU citizens.

FRONTEX plays a role as a coordinator of EU States' actions in the implementation of EU border management measures. Thus, it contributes to the efficient, reinforced and uniform control of persons and surveillance of EU States' external borders. FRONTEX assists EU States in training national border guards, including in establishing common training standards. It also carries out risk analyses, follows up developments in research related to the control and surveillance of external borders, assists EU States in circumstances requiring increased technical and operational assistance at external borders and provides EU States with the necessary support in organising joint return operations.

Training content

- Role and tasks of FRONTEX
- Cooperation between FRONTEX and national authorities: how to work together?
- Strengthening cooperation between FRONTEX and national authorities
- Judicial control of FRONTEX's activities
- Using FRONTEX to prevent trafficking and reduce irregular migration
- Relationship between FRONTEX and other EU institutions (EASO, Europol etc.)
- Specific case studies
- The future development of FRONTEX

2. Instruments

- FRONTEX website
- FRONTEX Work Programme 2012
- The State of Internal Security in the EU - A Joint Report by EUROPOL, EUROJUST and FRONTEX
- Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
- Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), COM (2010) 61 final. Brussels, 24.2.2010
- Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers
- Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

- Council Decision (2005/358/EC) of 26 April 2005 designating the seat of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

3. Trainers

Trainers for this topic should be EU experts as well as national practitioners

4. Trainees

This topic can be especially recommended for junior judges and prosecutors, and future/trainee judges and prosecutors.

5. Methodology

A. Training Method

Training methods might include basic seminars as well as study visits to the institution. Any training ought to provide a comprehensive overview of the role and tasks as well as further reform efforts envisaged for the agency. The role and powers of law enforcement authorities should be considered as well as the impact of fundamental rights on the procedures used in processing and hindering irregular migration. A study visit could also be contemplated.

B. Complementary e-learning

Training could be completed by e-learning.

C. Priority

Given the role and powers of FRONTEX, training on this topic is recommended.

D. Format

The training format recommended includes local, regional and national training.

b. Smuggling of migrants

1. Introduction

Trafficking in human beings is a serious problem in Europe. This crime is a gross violation of human rights and it is very often linked with organised crime. A distinction is, however, to be made between trafficking of human beings and irregular migration and the smuggling of irregular migrants. Although there are obvious similarities between these forms of activities, the aims of the two activities are distinct. Smuggling migrants has as its aim the unlawful cross-border transport of people in order that they might obtain, directly or indirectly, a financial or material burden. The purpose of trafficking, on the other hand, is the exploitation of the victims of this crime. Once having crossed the border, a trafficked migrant is further exploited in coercive or inhuman conditions. People are trafficked for the purpose of sexual and labour exploitation or the removal of organs. Women and children are particularly affected: women and girls represent 56 % of victims of forced economic exploitation and 98 % of victims of forced commercial sexual exploitation. Children are also trafficked to be exploited for begging or illegal activities, such as petty theft.

The control of irregular immigration and the associated fight against the smuggling of migrants focusses primarily on three areas:

- Improving external border controls: In addition to the work carried out by FRONTEX at the borders of the EU regarding irregular migration, a large proportion of irregular migrants originally entered the EU legally on short-stay visas, but remain in the EU for economic reasons once their visa has expired. Effective and credible external borders are essential. The EU is therefore further developing its border management strategy. This includes developing the capacities of FRONTEX, advancing the surveillance of the external borders of the EU by intensifying coordination between border surveillance authorities (which is the purpose of the European Border Surveillance System – EUROSUR), and ensuring that the Schengen acquis are correctly applied.
- Providing for sanctions against those who hire irregular labour force: The availability of black market work plays a considerable role in attracting irregular migrants. EU

States have agreed rules to counter this: the Employer Sanctions Directive targets employers who employ such migrants. The Directive not only seeks to make employing irregular migrants more difficult, but also includes protection measures in favour of workers, especially those exploited by unscrupulous employers. To this end, it lays down common minimum standards on sanctions and measures to be applied in the Member States against any employers infringing the prohibition.

- Implementing a coherent and safe returns and readmission policy: With one eye on ensuring that fundamental rights (including those contained in the Charter of Fundamental Rights) are upheld and considering the need to ensure that preference is being given to voluntary return wherever possible, the EU is seeking to harmonise and support national efforts to manage returns better and facilitate reintegration with the Return Directive. This legislation lays down common standards and procedures for the return of non-EU nationals who are staying in the EU irregularly. In addition, the EU has created the European Return Fund to provide support to Member States and to ensure that a humane and effective return policy is possible in safeguarding a comprehensive and sustainable migration policy.

Training contents

- The distinction between trafficking and smuggling of migrants
- The scope and content of the Employer Sanctions Directive
- The scope and content of the Returns' Directive
- Differences in implementation and national legislation
- Exchange of best practices and experiences

2. Instruments and Case Law

(1) EU Documents

- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

- Communication from the Commission to the European Parliament and the Council – Evaluation of the EU Readmission Agreements, COM(2011) 76 final. Brussels, 23.2.2011
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
- Report from the Commission to the European Parliament and the Council on the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, COM (2010) 493 final. Brussels, 15.10.2010
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

(2) Further EU Communications etc.

- Commission staff working document - Study on the international law instruments in relation to illegal immigration by sea (SEC(2007) 691) of 15 May 2007
- Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals (COM(2006) 402 final) of 19 July 2006
- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Study on the links between legal and illegal migration (COM(2004) 412 final) of 4 June 2004
- Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents (COM(2003) 323 final) of 3 June 2003
- Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration (COM(2001) 672 final) of 15 November 2001

- Clandestino Project Final Report, Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe, CIS8-044103, European Commission, 23 November 2009
- Clandestino Research Project, Political Discourses on irregular migration in the EU, , Counting the Uncountable: Data and Trends across Europe, European Commission, October 2009
- Clandestino Research Project, Pathways into Irregularity: Social Construction of irregular migration, , Counting the Uncountable: Data and Trends across Europe, European Commission, October 2009
- Clandestino Research Project, Size and Development of Irregular Migration to the EU, Counting the Uncountable: Data and Trends across Europe, European Commission, October 2009

(3) Case Law

- *Said Shamilovich Kadzoev (Huchbarov)*, [Case C-357/09 PPU](#), 30 November 2009: Directive 2008/115/EC, Visas, asylum, immigration and other policies related to free movement of persons – Return of illegally staying third-country nationals – Article 15(4) to (6) – Period of detention – Taking into account the period during which the execution of a removal decision was suspended – Concept of ‘reasonable prospect of removal’
- *Hassen El Dridi, alias Karim Soufi*, [Case C-61/11 PPU](#), 28 April 2011: Area of freedom, security and justice – Directive 2008/115/EC – Return of illegally staying third-country nationals – Articles 15 and 16 – National legislation providing for a prison sentence for illegally staying third-country nationals in the event of refusal to obey an order to leave the territory of a Member State – Compatibility
- *Alexandre Achughbalian v. Préfet du Val-de-Marne*, [Case C-329/11](#), 6 December 2011: Area of freedom, security and justice – Directive 2008/115/EC – Common standards and procedures for returning illegally staying third-country nationals – National legislation making provision, in the event of illegal staying, for a sentence of imprisonment and a fine

3. Trainers

EU and national experts as well as staff members from the relevant institutions.

4. Trainees

Senior judges and prosecutors.

5. Methodology

A. Training Method

Basic training seminars are advisable for all trainees. Distance learning offers a viable alternative in many instances.

More specialised seminars dealing with e.g. specific questions on individual rights, the role of trafficking and studying in greater detail the relevant jurisprudence for more senior judges may be appropriate.

B. Complementary e-learning

Complementary e-learning can be recommended.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Training should preferably take place at local and regional level.

V. REGULAR MIGRATION

1. Introduction

Against a backdrop of facilitating free movement of nationals of EU Member States and with a view to finding better ways to control migration from third States, the idea of regular migration, as distinct from irregular migration (see above), has evolved. The EEC treaty was innovative in that it laid the foundation for free movement, a concept that has become a key pillar in the integration process within the EU. Legal immigration from third States is a more recent development and only since the Maastricht Treaty in 1992 has there been an explicit recognition of the common interest nature of migration policy. Notwithstanding the incremental increases in the EU's competences in respect to the movement of Member State nationals as well as the nationals of third States, it is important to consider the partial harmonisation in this area and that the individual Member States are still entrusted with a considerable discretion. Any training ought to bear this in mind.

a. General Provisions on Free Movement

1. Introduction

The principle of free movement, and the original form of free movement of workers as it was originally envisaged, is a fundamental principle of the Treaty enshrined in Article 45 of the Treaty on the Functioning of the European Union and developed by EU secondary legislation and the case law of the Court of Justice. A distinction is made between the right to free movement enjoyed by EU citizens and third country nationals. EU citizens are entitled to look for a job in another EU country, work without the need to have a work permit, reside there for the purpose of employment as well as remain in that Member State even after the employment has ended. They enjoy equal treatment vis-à-vis nationals with regard to access to employment, working conditions and all other social and tax advantages. Certain aspects of the social security systems of Member States are also transferrable and EU nationals can have certain types of health & social security coverage transferred to the country in which they go to seek work. These general freedoms apply to those seeking employment, EU nationals

already working in another EU country, EU citizens who return to their country of origin having spent a period of time working abroad as well as the family members of these three categories.

Concerning third country nationals, in certain situations they may have the right to work in an EU country or to be treated equally with EU nationals as regards conditions of work. These rights depend on their status as family members of EU nationals and on their own nationality. The current EU measures on legal immigration cover the conditions of entry and residence for certain categories of immigrants, such as highly qualified workers subject to the 'EU Blue Card Directive' and students and researchers. Family reunification and long-term residents are also provided for.

In December 2011, the so-called Single Permit Directive was adopted. It creates a set of rights for non-EU workers legally residing in an EU State. At the same time, EU is discussing Commission proposals for further Directives on the conditions of entry and residence for seasonal workers and intra-corporate transferees. In recognition of the need to ensure adequate numbers of sufficiently well-qualified potential employees are available to sustain economic growth, the ultimate aim of these legislative measures is to simplify migration procedures and give migrants clear employment-related rights. In addition, the Long-Term Residence Directive has created a single status for non-EU nationals who have been lawfully resident in an EU country for at least five years, thus establishing a legal basis for equal treatment in all EU countries.

Generally speaking, the case law of the Court of Justice of the EU on the issue of free movement has been characterised by an expansive approach to the fundamental rights guaranteed by the treaties and, as a corollary, a restrictive interpretation of exceptions allowed by these rights. This has resulted in the greatest possible scope being afforded to the rights and the largest possible freedom to those exercising the same.

Training content

- The concept of free movement, its scope and limitations
- The distinction between the rights of EU citizens and citizens of third countries
- Scope of Directive on citizens free movements: the right of residence
- The position of family members under general free movement aspects
- Procedural/administrative concerns in the area of free movement

- The case law of the Court
- Free movement and the fundamental freedoms

2. Instruments and Case Law

(1) Basic Documents

- Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions: European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 final. Brussels, 20.7.2011
- Commission Staff Working Paper: EU initiatives supporting the integration of third-country nationals, SEC(2011) 957 final. Brussels, 20.7.2011
- Communication from the Commission to the European Parliament, the Council, the European economic and social Committee of the Regions: A dialogue for migration, mobility and security with the southern Mediterranean countries, COM (2011) 292 final. Brussels, 24.5.2011
- Communication from the Commission to the European Parliament, the Council, the economic and social Committee and the Committee of the Regions: Communication on Migration, COM (2011) 248 final, Brussels, 4.5.2011
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
- Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community

(2) Case Law

- *Hristo Gaydarov v Director na Glavna direksia "Ohranitelna politsia" pri Ministerstvo na vatrešnite raboti*, [Case C-430/10](#), 17 November 2011: Freedom of movement of a Union citizen – Directive 2004/38/EC – Prohibition on leaving national territory due to a criminal conviction in another country – Drug trafficking – Whether measure can be justified on grounds of public policy

- *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills*, [Case C-209/03](#), 15 March 2005: Citizenship of the Union – Articles 12 EC and 18 EC – Assistance for students in the form of subsidised loans – Provision limiting the grant of such loans to students settled in national territory
- *Michel Trojani v Centre public d'aide sociale de Bruxelles (CPAS)*, [Case C-456/02](#), 7 September 2004 : Freedom of movement of persons – Citizenship of the European Union – Right of residence – Directive 90/364/EEC – Limitations and conditions – Person working in a hostel in return for benefits in kind – Entitlement to social assistance benefits
- *Baumbast and R v Secretary of State for the Home Department*, [Case C-413/99](#), 17 September 2002: Freedom of movement for persons - Migrant worker - Rights of residence of members of the migrant worker's family - Rights of the children to pursue their studies in the host Member State - Articles 10 and 12 of Regulation (EEC) No 1612/68 - Citizenship of the European Union - Right of residence - Directive 90/364/EEC - Limitations and conditions
- *F.C. Terhoeve v Inspecteur van de Balstingdienst Particulieren/Ondernemingen Buitenland*, [Case C-18/95](#), 26 January 1999: Freedom of movement for workers - Combined assessment covering income tax and social security contributions - Non-applicability to workers who transfer their residence from one Member State to another of a social contributions ceiling applicable to workers who have not exercised their right to freedom of movement - Possible offsetting by income tax advantages – Possible incompatibility with Community law - Consequences
- *Groener v Minister for Education*, [Case C-379/87](#), 28 November 1989: interpretation of Article 48(3) of the EEC Treaty and Article 3 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community
- *Keck and Mithouard*, [Joined Cases C-267/91 and C-268/91](#), 24 November 1993: interpretation of the rules of the EEC Treaty relating to competition and freedom of movement within the Community
- *R v Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department*, [Case C-370/90](#), 7 July 1992: interpretation of Article 52 of the EEC Treaty and of Council Directive 73/148/EEC of 21 May 1973 on the abolition of

restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services

- *Diatta v Land Berlin*, [Case C-267/83](#), 13 February 1985: interpretation of Articles 10 and 11 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community
- *Ministere Public v Even and ONPTS*, [Case C-207/78](#), 31 May 1979: interpretation of the provisions of Articles 3 and 4 of Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community

3. Trainers

EU experts, national practitioners and leading scholars are recommended.

4. Trainees

Training with a view to raising understanding and knowledge of general aspects of free movement is of great importance. This should be provided to both senior and junior judicial officials as well as future/trainee judges.

5. Methodology

A. Training Method

Training courses, basic seminars and workshops are the most appropriate options open for training in this broad and diverse area of law.

B. Complementary e-learning

Complementary e-learning is a suitable method of additional training.

C. Priority

As many of the other issues in the area of regular migration are based on general free movement considerations, training on this topic is top priority.

D. Format

Whereas local and national training are suitable methods due to the extensive discretion of the Member States, EU-wide training is also to be considered.

b. Visas

1. Introduction

A common visa policy simultaneously facilitating the entry of legal visitors into the EU, while strengthening internal security is essential for a border-free Schengen Area. The EU has legislated in a number of areas regulating the common visa policy of the (at present) 25 Schengen States. In 2010, these States issued around 11 million so-called “Schengen visas”. In order to facilitate this aim of increased mobility and security, the EU has been developing large-scale IT systems for collecting, processing and sharing information relevant to external border management, the Visa Information System (VIS). This system can perform biometric matching, primarily of fingerprints, for identification and verification purposes. The VIS aims to facilitate border checks, fight abuses, protect travellers, assist in the making of asylum applications and enhance security. As a Schengen instrument, VIS applies to all Schengen States.

Training content

- Conditions for obtaining a visa
- Different types of visas issued and the limitations of each
- The scope and content of the relevant legislation; jurisprudence on the scope and content of this legislation
- The synergies between the visa requirements and the Schengen acquis

2. Instruments and Case Law

(1) EU Documents

- Regulation (EU) No 154/2012 of the European Parliament and Council of 15 February 2012 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)

- Commission Implementing Decision 2011/636/EU of 21 September 2011 determining the date from which the Visa Information System (VIS) is to start operations in a first region
- Commission Decision C(2010)3667 final of 11 June 2010 establishing the Handbook for the organisation of visa sections and local Schengen cooperation
- Commission Decision C(2010) 1620 final of 19 March 2010 establishing the Handbook for the processing of visa applications and the modification of issued visas
- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)
- Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

(2) Case Law

- *Criminal proceedings against Minh Khoa Voh*, [Case C-83/12 PPU](#), 10 April 2012
- *Said Shamilovich Kadzoev (Huchbarov)*, [Case C-357/09 PPU](#), 30 November 2009: Visas, asylum, immigration and other policies related to free movement of persons – Directive 2008/115/EC – Return of illegally staying third-country nationals – Article 15(4) to (6) – Period of detention – Taking into account the period during which the execution of a removal decision was suspended – Concept of ‘reasonable prospect of removal’
- *María Julia Zurita García (C-261/08) and Aurelio Choque Cabrera (C-348/08) v Delegado del Gobierno en la Región de Murcia*, [Joined cases C-261/08 and C-348/08](#), 22 October 2009: Visas, asylum and immigration – Measures concerning the crossing of external borders – Article 62(1) and (2)(a) EC – Convention implementing the Schengen Agreement – Articles 6b and 23 – Regulation (EC) No 562/2006 – Articles 5, 11 and 13 – Presumption concerning the duration of the stay – Unlawful presence of third-country nationals on the territory of a Member State – National legislation allowing for either a fine or expulsion, depending on the circumstances
- *Criminal proceedings against Rafet Kqiku*, [Case C-139/08](#), 2 April 2009: Visas, asylum, immigration – Third-country national holding a Swiss residence permit – Entry of and stay in the territory of a Member State for purposes other than transit – Lack of a visa

3. Trainers

EU experts, national practitioners and leading scholars are recommended.

4. Trainees

Training on visa provisions can be especially recommended to senior judges.

5. Methodology

A. Training Method

A specialized seminar wherein the topic can be presented in depth, possibly in connection with information on the Schengen system, would be most suitable.

B. Complementary e-learning

E-learning on the practical elements of this issue is recommended.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Training should preferably take place at local and regional level. A second level of transnational or EU-wide training is also worth considering to deal with the cross-border aspects raised by this issue.

c. Family Reunification

1. Introduction

Family reunification is one of the major sources of immigration to Europe. Starting with the increase in labour migration in the 1960s and 1970s, it became apparent that migrant workers wished to remain in the host country on a more permanent basis and this meant being reunited with their families wherever possible. The fundamental role played by families and their importance has hastened the need for family reunification on the international agenda. Art. 16 of the Universal Declaration of Human Rights recognises the right of families to protection; the UN General Assembly in its International Year of the Family in 1994 described the family as “the foundation of human society and the source of human life”; and both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have further confirmed this.

With a view to advancing integration and in recognition of the family as the fundamental societal unit, the European legislator has made efforts to determine and ensure the conditions for exercising the right to family reunification in the EU that are, in addition, common to all EU States. The Directive on the right to family reunification determines the conditions under which family reunification is granted, as well as the rights of the family members concerned. This legislation stipulates, inter alia, that legally residing non-EU nationals can bring their spouse, under-age children and the children of their spouse to the EU State in which they are legally residing. EU States do retain some considerable amount of discretion and they may also authorise reunification with an unmarried partner, adult dependent children, or dependant older relatives. Once in the EU, eligible family members receive a residence permit and obtain access to education, employment and to vocational training on the same basis as other non-EU nationals. After a maximum of five years of residence, family members may apply for autonomous status if the family links still exist.

Notwithstanding these relatively generous conditions, the right to family reunification is also subject certain restrictions such as the need to respect the public order and considerations of public security. Member States may choose to impose additional conditions: such as requiring non-EU nationals to have adequate accommodation, sufficient resources and health insurance. Moreover, a qualifying period of no more than two years can also be imposed in certain situations. Family reunification can also be refused for spouses who are under 21 years of age.

Polygamy is, in principle, not recognised and only one spouse can benefit from the right to family reunification although there is some State practice to the contrary. EU states may also ask foreigners to comply with integration measures. Penalties in the event of fraud or marriages of convenience are also foreseen. However, as made clear by the European Court of Justice (Case C-540/03), EU States must apply the Directive's rules in a manner consistent with the protection of fundamental rights, notably regarding family life and the principle of the best interests of the child.

Due to the special protected position of the family, fundamental and human rights considerations also play a considerable role in the legal framework and it is necessary to be familiar with the jurisprudence of the European Court of Human Rights on this issue. The right of a non-national to enter or remain in a country is not as such guaranteed by the ECHR, but immigration control must be exercised consistently with Convention obligations, and the exclusion of a person from a State where members of his or her family are living may raise an issue under Article 8. Considerations such as the definition of a family, the proportionality of measures taken by Member States and the role of Article 14 should all be borne in mind.

Training content

- Family reunification in its international context
- The scope and content of the Directive 2004/38 on family reunification of EU citizens
- EU citizens, free movement and family reunification
- Directive 2003/86 on the right of family reunification: application in the Member States
- Synergies with EU social security law
- Family reunification and refugees
- Human rights considerations and family reunification; the jurisprudence of the ECHR

2. Instruments and Case Law

(1) EU Documents

- Regulation (EC) No 883/2004 of 29 April 2004 of the European Parliament and of the Council on the coordination of social security systems, OJ L166/1 of 30 April 2004
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside

freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

- Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the Right to Family Reunification, COM(2008) 610 final. Brussels, 8.10.2008
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
- Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ, English Special Edition 1968(II), 475
- Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (consolidated version), OJ L28/1 of 30 January 1997
- Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008)840 final of 10 December 2008
- Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final of 2 July 2009
- Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86 on the right to family reunification, COM(2008) 610 final of 8 October 2008
- Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC), COM(2011) 735 final of 15 November 2011
- Commission Implementing Decision amending Commission Decision No C (2010) 1620 final of 19 March 2012 establishing the Handbook for the processing of visa applications and the modification of issued visas, COM(2011) 5501 final of 4 August 2011

(2) Case law

- *Secretary of State for the Home Department v. Muhammad Sazzadu Rahman, Fazly Rabby Islam, Mohibullah Rahman*, [Case C-83/11, Opinion of the Advocate General](#) Bot of the Court of Justice of the European Union of 27 March 2012: Article 3(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
- *Shirley McCarthy v. Secretary of State for the Home Department*, [Case C-434/09](#), 5 May 2011: Freedom of movement for persons – Article 21 TFEU – Directive 2004/38/EC – ‘Beneficiary’ – Article 3(1) – National who has never made use of his right of free movement and has always resided in the Member State of his nationality – Effect of being a national of another Member State – Purely internal situation
- *Gerardo Ruiz Zambrano v. Office national de l’emploi (ONEm)*, [Case C-34/09](#), 8 March 2011: Citizenship of the Union – Article 20 TFEU – Grant of right of residence under European Union law to a minor child on the territory of the Member State of which that child is a national, irrespective of the previous exercise by him of his right of free movement in the territory of the Member States – Grant, in the same circumstances, of a derived right of residence, to an ascendant relative, a third country national, upon whom the minor child is dependent – Consequences of the right of residence of the minor child on the employment law requirements to be fulfilled by the third-country national ascendant relative of that minor
- *Rhimou Chakroun v. Minister van Buitenlandse Zaken*, [Case C-578/08](#), 4 March 2010: Right to family reunification – Directive 2003/86/EC – Concept of ‘recourse to the social assistance system’ – Concept of ‘family reunification’ – Family formation
- *Minister voor Vreemdelingszaken en Integratie v. Eind*, [Case C-291/05](#), 11 December 2007: Freedom of movement for persons – Workers – Right of residence for a family member who is a third-country national – Return of the worker to the Member State of which he is a national – Obligation for the worker’s Member State of origin to grant a right of residence to the family member – Whether there is such an obligation where the worker does not carry on any effective and genuine activities
- *European Parliament v. Council of the European Union*, [Case C-540/03](#), 27 June 2006: Immigration policy – Right to family reunification of minor children of third country nationals – Directive 2003/86/EC – Protection of fundamental rights – Right to respect for family life – Obligation to have regard to the interests of minor children

- *Commission v. Italy*, [Case C-424/98](#), 25 May 2000: Failure of a Member State to fulfil its obligations - Right of residence - Directives 90/364/EEC, 90/365/EEC and 93/96/EEC - Conditions as to resources.

(3) ECHR Case Law

- *Antwi and Others v. Norway*, First Section, Application no. 26940/10, European Court of Human Rights, 14 February 2012 (violation of Article 8 (right to respect for private and family life), applicants complained about the immigration authorities' decision in 2006 to expel Mr Antwi and prohibit his re-entry into Norway for five years following their discovering that his passport was forged)
- *G.R. v. Netherlands*, Third Section, Application no. 22251/07, European Court of Human Rights, 10 January 2012 (applicant alleged that there had been a violation of his right to respect for his family life, as guaranteed by Article 8 of the Convention, in that he had unreasonably been refused an exemption from the obligation to pay an administrative charge to obtain a decision on his request for a residence permit, violation of Article 13 (right to an effective remedy))
- *Nunez v. Norway*, Fourth Section, Application no. 55597/09, European Court of Human Rights, 28 June 2011 (violation of Article 8 (right to protection of private and family life), complaint of a national of the Dominican Republic that an order to expel her from Norway would separate her from her small children living in Norway)
- *Rodrigues da Silva and Hoogkamer v. Netherlands*, Former Section II, Application no. 50435/99, European Court of Human Rights, 31 January 2006 (violation of Article 8, applicants alleged that the Government's refusal to allow the first applicant to reside in the Netherlands breached their right to respect for their family life as guaranteed by Article 8 of the Convention)
- *Sen v. Netherlands*, First Section, Application no. 31465/96, European Court of Human Rights, 21 December 2001 (violation of Article 8, applicants complained of an infringement of their right to respect for their family life, guaranteed by Article 8 of the European Convention on Human Rights, on account of the rejection of their application for a residence permit for Sinem, a decision which prevented her from joining them in the Netherlands)
- *Boultif v. Switzerland*, Second Section, Application no. 54273/00, European Court of Human Rights, 2 November 2001 (violation Article 8, applicant complained under

Article 8 of the Convention that the Swiss authorities had not renewed his residence permit. As a result, he has been separated from his wife, who is a Swiss citizen and cannot be expected to follow him to Algeria)

- *Gül v. Switzerland*, Chamber, Application no. 23218/94, European Court of Human Rights, 19 February 1996 (breach by the respondent State of its obligations under Article 8 (art. 8) of the Convention)
- *Moustaquim v. Belgium*, Chamber, Application no. 12313/86, European Court of Human Rights, 18 February 1991 (breach by the respondent State of its obligations under Article 8 (art. 8) - taken alone or together with Article 14 (art. 14+8) - and Articles 3 and 7 (art. 3, art. 7))
- *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, Plenary, Application no. 9214/80; 9473/81; 9474/81, European Court of Human Rights, 28 May 1985 (violations of Article 3 (art. 3), Article 8 (art. 8) (taken alone or in conjunction with Article 14) (art. 14+8) and Article 13 (art. 13), victims of a practice of discrimination on the grounds of sex, race and birth)

3. Trainers

The trainers' profiles recommended for this topic are those of international experts, including those from the European Court of Human Rights, scholars and national practitioners with experience.

4. Trainees

This topic can be especially recommended to junior judges and future/trainee judges. Senior judges might however also benefit from the training, especially in view of the human rights considerations and the role of the ECHR.

5. Methodology

A. Training Method

Basic seminars are recommended for all trainees. In particular, certain judges dealing primarily with issues of social or family law may be in need of specialised seminars dealing with the concepts in greater details.

Specialised seminars focussing on more specific questions of individual rights and studying in more detail the jurisprudence and study visits to the ECtHR for senior judges and senior prosecutors are appropriate.

B. Complementary e-learning

Training can be completed by e-learning.

C. Priority

Training and working groups on the subject should be a priority.

D. Format

The training format recommended includes local, national and EU-wide training.

d. Long-Term Residents

1. Introduction

A declared aim of the EU is the integration of non-EU nationals who are long-term residents in the EU States. It is stated as central to promoting economic and social cohesion in the EU. As a consequence, non-EU nationals who have been residing legally in an EU State for a certain period of time should be granted a set of uniform rights, almost identical to those enjoyed by EU citizens.

The Directive 2003/109/EC on the status of non-EU nationals who are long-term residents has a twofold purpose: it creates the status of a long-term resident encompassing a strengthened protection from expulsion and it gives the holder of this status further rights regarding settling in another Member State. It makes the award of the status as a long-term resident conditional on a person having lived legally in an EU State for an uninterrupted period of five years. Certain criteria apply, however, to the granting of this status including the requirements that the person has a stable and regular source of income, is covered by adequate health insurance and, if required by the Member State of residence, comply with any prescribed integration measures. The applicants must also not constitute a threat to public security or public policy. Compliance with these conditions entitles the third country national to a renewable EU long-

term residence permit. This status entitles the permit holder to the same treatment as a citizen of the EU in certain areas including access to employment, education and social protection measures. They also enjoy increased freedom of mobility between Member States. Since 2010, the scope of the Directive also applies to the beneficiaries of international protection. The United Kingdom, Ireland and Denmark have special arrangements for immigration and asylum policy, and the Directive on long-term resident status does not therefore apply in these countries.

Training content

- The scope of the Directive
- Application in the Member States
- Applicable jurisprudence of the Court of Justice

2. Instruments and Case Law

(1) EU Documents

- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents
- Report from the Commission on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM (2011) 585 final

(2) Case law

- *European Commission v Kingdom of the Netherlands*, [Case C-508/10](#), 26 April 2012: Failure of a Member State to fulfil obligations – Directive 2003/109/EC – Status of third-country nationals who are long-term residents – Application for long-term resident status – Application for a residence permit in a second Member State made by a third-country national who has already acquired long-term resident status in a first Member State or by a member of his family – Amount of the charges levied by the competent authorities – Disproportionate charges – Obstacle to the exercise of the right of residence
- *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES)*, [Case C-571/10](#), 24 April 2012: Area of Freedom, Justice and Security –

Article 34 of the Charter of Fundamental Rights of the European Union – Directive 2003/109/EC – Status of third-country nationals who are long-term residents – Right to equal treatment with regard to social security, social assistance and social protection – Derogation from the principle of equal treatment for social assistance and social protection measures – Exclusion of ‘core benefits’ from the scope of that derogation – National legislation providing for housing benefit for low income tenants – Amount of funds for third-country nationals determined on the basis of a different weighted average – Rejection of an application for housing benefit owing to the exhaustion of the funds for third-country nationals

3. Trainers

EU experts and leading national practitioners are recommended

4. Trainees

Training is especially recommended for senior judges and prosecutors as training in this matter is addressed to practitioners that have a good understanding of the migration and social system and thus are able to exercise their jurisdiction in cases referred to it.

5. Methodology

A. Training Method

The training can be carried out in the form of a basic seminar but it might not be necessary to dedicate a whole seminar to the topic. It can successfully be allocated as part (one lecture) of another training course.

B. Complementary e-learning

E-learning on the practical elements of this issue is not recommended.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

The training can be carried out in a local, regional or national setting.

e. Labour Migration

1. Introduction

In answer to the need to have a well trained workforce in the EU, the EU is attempting to introduce a number of interconnected measures which aim to produce flexible admission systems allowing migrants access to the European labour market. These measures include i) the so-called Blue Card Directive; ii) the Single Permit Directive; iii) the Intra-Corporate Transfer Directive Proposal; iv) and the Seasonal Workers Directive Proposal.

i) Blue Card Directive

By creating a harmonised fast-track procedure and common criteria (a work contract, professional qualifications and a minimum salary level) for issuing a special residence and work permit, the EU has attempted to facilitate non-EU workers considering taking up highly skilled employment in the EU states. The so-called Blue Card facilitates access to the labour market and entitles holders to socio-economic rights and favourable conditions for family reunification and movement around the EU. This scheme applies to non EU nationals but not to researchers under Directive 2005/71, long term residents under Directive 2003/109, non-EU family members of EU migrant workers, refugees or posted workers. The precise conditions upon which the granting of such a Blue Card are based are: employment contract or binding job offer; salary 1.5 times average in host MS; proof of fulfilment of national conditions for regulated professions; proof of higher professional qualifications for unregulated professions; full health insurance; no threat to public policy; Community preference; ethical recruitment. The EU Blue Card does not create a right of admission; it is demand-driven, i.e. based on a work contract. Its period of validity is between one and four years, with possibility of renewal.

ii) Single permit

In December 2011, the so-called Single Permit Directive was adopted creating rights for non-EU workers legally residing in an EU State. The Directive should be applicable to non-EU nationals with authorisation to reside or work in the EU, independently of their initial reason for admission. Its scope includes both non-EU nationals seeking to be admitted to an EU State in order to stay and work there and those who are already resident and have access to the labour market or are already working there. It provides for a single residence and work permit; a single application procedure for this permit; a set of rights for all non-EU workers already admitted but who have not yet been granted long-term resident status, in a number of key areas: working conditions, education and vocational training, recognition of diplomas, social security, tax benefits, access to goods and services including procedures for housing and employment advice services.

iii) Intra-Corporate Transfer

Currently, a Directive for intra-corporate transfer of non-EU skilled workers is under discussion within the European Parliament and the Council. It has as its objective the harmonisation of common definitions and conditions relating to the criteria of admission and rights of ICTs and their family members. It will also focus on the rights of employees when residing, working and moving between the Member States, the rights of family members, and it will include certain procedural safeguards to achieve these aims. The scope of the Directive Proposal is limited to specific types of personnel of multinationals. The focus is on the role/functions of that person in the company as well as her/his knowledge, qualifications or education. 3 categories of employees are eligible to enjoy the status provided for under the ICT: managers, i.e. top senior management; specialists i.e. specific, essential employees with uncommon knowledge; and graduate trainees with a higher education who are being prepared for a management position.

iv) Seasonal Workers

In addition to the ICT proposal, a further proposal for a Directive on seasonal employment is currently under discussion within the European Parliament and the Council. When adopted, seasonal workers will be able to enter the EU faster when there is a demand for their work (it will be made possible through a fast-track procedure and a single residence/work permit simplifying the rules currently applicable in EU States). The ultimate aim is to reduce the number of people working unauthorised in seasonal jobs and/or staying on longer in the EU than they are entitled to while at the same time expediting the procedure for providing access to the labour market when need by adopting clearer, simpler admission. Employers will be

required to prove that seasonal workers have appropriate accommodation during their stay, and a complaints mechanism will be available for non-EU seasonal workers and third parties.

Training content

- The scope and content of the primary Directives
- The proposed new legislative measures
- Divergences in Member States practice in the transposition of the Directives

2. Instruments and Case Law

(1) EU Documents

- Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally re-siding in a Member State
- Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
- Commission Staff Working Document: Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of seasonal employment, SEC(2010) 887. Brussels, 13.7.2010
- Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, COM(2010) 379 final. Brussels, 13.7.2010
- Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378 final
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303/16 of 2 December 2000, 16
- Council Regulation(EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, OJ L 157/1 of 15 June 2002, 1

- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment, COM(2003) 336 final

3. Trainers

This training should be conducted by international and EU experts, leading national practitioners and experts from NGOs.

4. Trainees

Information on the issue is of primary interest for junior judges and prosecutors, and future/trainee judges and prosecutors. Senior judges ought to be made aware of the potential for further developments and the new legislative proposals.

5. Methodology

A. Training Method

Training should take the shape of a specialised seminar focusing on discussions and debate. Case law from different European countries should be included.

B. Complementary e-learning

E-learning on the practical elements of this issue is recommended. However, as some of the proposed Directives are not yet into force, complementary e-learning is not necessary on these issues.

C. Priority

Training on this topic has priority.

D. Format

Training should take place at EU-wide or regional level.

f. Training (including study and research)

1. Introduction

The EU applies common rules of admission for non-EU nationals who request admission to an EU State for the purpose of undertaking a course of studies leading to a higher education qualification (students). In addition to the area of higher education, a common set of rules also apply in the case of persons pursuing a recognised programme of secondary education (pupils), a training period without remuneration (unremunerated trainees), or to take part in a national or EU volunteer programme. These common rules are laid down in the 2004 Directive. Two basic admission criteria must be fulfilled: there is a requirement to have health insurance or – in the case of a minor – parental authorisation. Further specific conditions cover, for instance, the need to prove either the availability of sufficient resources to cover subsistence or, if the EU State so requires, sufficient knowledge of the language. The imposition of certain criteria is left to the discretion of the EU State meaning that some of the conditions provided for in the Directive are optional.

The "Researchers" Directive provides for a fast track procedure for the admission of non-EU researchers for stays of more than three months under the provision that the researcher has a “hosting agreement” with a research organisation. Research organisations play a major role in this process: once included in a list of “approved research organisations”, they certify the status of the researcher in a hosting agreement with the researcher. The document confirms the existence of a valid research project, as well as the possession by the researcher of the necessary scientific skills, sufficient resources and health insurance.

Training content

- The scope and content of the primary Directives
- Divergences between Member States

2. Instruments

(1) Basic documents

- Report from the Commission on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, COM (2011) 587 final
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ 289/15 of 3 November 2005, 15
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375/12 of 23 December 2004, 12
- Council Recommendation 2005/762/EC of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community
- 28/09/2005 - Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research

3. Trainers

Recommended experts are: EU experts, national practitioners, scholars.

4. Trainees

Training is recommended for senior judges.

5. Methodology

A. Training Method

Training should be offered in specialised seminars. It is unlikely that it will be necessary to dedicate a whole seminar to the topic. It can successfully be allocated as part (one lecture) of another training course.

B. Complementary e-Learning

Complementary e-learning is not recommended.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Training should take place at local, regional and national level

VI. EUROPEAN CITIZENSHIP

1. Introduction

Since the Treaty of Maastricht in 1992, the notion of a Citizenship of the European Union has been present in the legal framework of the EU. Articles 20 and 21 of the Treaty on the Functioning of the European Union contain a definition of a citizen and lay down certain rights. These provisions are more than simply up-grading the concept of national citizenship. In particular, the right to “move and reside freely within the territory of the Member States” has been interpreted by the European Court of Justice as the source of the right of nationals of EU Member States to travel and reside within the territories of other Member States, it is the cornerstone of free movement. European citizenship is supplementary to national citizenship and affords rights such as the right to vote in European elections, the previously mentioned right to free movement and the right to consular protection from other EU states' embassies. The CJEU has held that this Article confers a directly effective right upon citizens to reside in another Member State. (see Grzelczyk) Before the case of Baumbast (see above), it was widely assumed that non-economically active citizens had no rights to residence deriving directly from the EU Treaty, only from directives created under the Treaty. In Baumbast, however, the CJEU held that Article 18 of the EC Treaty (as it then was) granted a generally applicable right to residency, which is limited by secondary legislation, but only where that secondary legislation is proportionate. Member States can distinguish between nationals and Union citizens but only if the provisions satisfy the test of proportionality. Migrant EU citizens have a "legitimate expectation of a limited degree of financial solidarity... having regard to their degree of integration into the host society"

Training content

- The concept of European citizenship
- The effect of citizenship on the individual; free movement
- Rights and duties flowing from European citizenship

2. Instruments and Case Law

(1) Basic Documents

- EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights, COM(2010) 603 final. Brussels, 27.10.2010
- Opinion of the Committee of the Regions on the EU Citizenship Report 2010 (2011/C 166/02)
- Report on Progress towards effective EU Citizenship 2007-2010, COM(2010) 602 final. Brussels, 27.10.2010
- Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals
- Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, COM(2006) 791 final. Brussels, 12.12.2006
- Report from the Commission of 27 October on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in the elections for the European Parliament in the Member State of residence (Directive 93/109/EC), COM(2010) 605 final. Brussels, 27.10.2010
- Report from the Commission to the European Parliament and to the Council of 20 December 2007 on granting a derogation pursuant to Article 19(2) of the EC Treaty, presented under Article 14(3) of Directive 93/109/EC on the right to vote and to stand

as a candidate in elections to the European Parliament COM(2007) 846 final. Brussels, 20.12.2007

- Report from the Commission to the European Parliament and to the Council of 27 January 2003 on granting a derogation pursuant to Article 19(2) of the EC Treaty, presented under Article 14(3) of Directive 93/109/EC on the right to vote and to stand as a candidate in elections to the European Parliament, COM(2003) 31. Brussels, 27.01.2003
- Communication from the Commission of 18 December 2000 on the application of Directive 93/109/EC to the June 1999 elections to the European Parliament – Right of Union citizens residing in a Member State of which they are not nationals to vote and stand in elections to the European Parliament, COM(2000) 843 final. Brussels, 18.12.2000
- Report from the Commission to the European Parliament and the Council of 7 January 1998 on the application of Directive 93/109/EC – Voting rights of EU citizens living in a Member State of which they are not nationals in European Parliament elections: COM(97) 731 final. Brussels, 07.01.1998
- Report from the Commission: Fifth Report on Citizenship of the Union (1 May 2004 – 30 June 2007), COM (2008) 85 final. Brussels, 15.2.2008
- Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM (2008) 840 final. Brussels, 10.12.2008

(2) Case Law

- *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)*, [Case C-34/09](#), 8 March 2011: Citizenship of the Union – Article 20 TFEU – Grant of right of residence under European Union law to a minor child on the territory of the Member State of which that child is a national, irrespective of the previous exercise by him of his right of free movement in the territory of the Member States – Grant, in the same circumstances, of a derived right of residence, to an ascendant relative, a third country national, upon whom the minor child is dependent – Consequences of the right of residence of the minor child on the employment law requirements to be fulfilled by the third-country national ascendant relative of that minor

- *K. Tas-Hagen and R.A. Tas v. Raadskamer WUBO van de Pensioen- en Uitkeringsraad*, [Case C-192/05](#), 26 October 2006: Benefit awarded to civilian war victims by a Member State – Condition of residence in the territory of that State at the time when the application for the benefit is submitted – Article 18(1) EC
- *M.G. Eman and O.B. Sevinger v. College van burgemeester en wethouders van Den Haag*, [Case C-300/04](#), 12 September 2006: European Parliament – Elections – Right to vote – Requirements of residence in the Netherlands for Netherlands citizens of Aruba – Citizenship of the Union
- *Egon Schempp v. Finanzamt München V*, [Case C-403/03](#), 12 July 2005: Citizenship of the Union – Articles 12 EC and 18 EC – Income tax – Deductibility from taxable income of maintenance paid by a taxpayer resident in Germany to his former spouse resident in Austria – Proof of taxation of the maintenance payments in that Member State
- *Heikki Antero Pusa v. Osuuspankkien Keskinäinen Vakuutusyhtiö*, [Case C-224/02](#), 29 April 2004: Citizenship of the Union – Article 18 EC – Right to move freely and to reside in the Member States – Attachment of remuneration – Detailed rules
- *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, [Case C-184/99](#), 20 September 2001: Articles 6, 8 and 8a of the EC Treaty (now, after amendment, Articles 12 EC, 17 EC and 18 EC) - Council Directive 93/96/EEC - Right of residence for students - National legislation which guarantees a minimum subsistence allowance only for nationals, persons covered by Regulation (EEC) No 1612/68 and stateless persons and refugees - Foreign student who has met his own living expenses during the first years of his studies.

3. Trainers

Recommended experts are: EU experts, national practitioners, scholars

4. Trainees

Training is recommended for senior judges.

5. Methodology

A. Training method

Training should be offered in specialised seminars. It is unlikely that it will be necessary to dedicate a whole seminar to the topic. It can successfully be allocated as part (one lecture) of another training course.

B. Complementary e-learning

Complementary e-learning is not recommended.

C. Priority

Training on this topic is recommended. Judges should have at least a rudimentary knowledge of this matter as it is important as the foundation for proper understanding of other topics in this area.

D. Format

Training should take place at local, regional and national level.

VII. THE SCHENGEN ACQUIS

1. Introduction

To counterbalance the abolition of the internal borders introduced within the Schengen area, so-called "compensatory" measures were established. This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security, to tackle organised crime and, in particular, to enable citizens to cross internal borders without being subjected to border checks. The border-free Schengen Area guarantees free movement to more than 400 million EU citizens, as well as to many non-EU nationals,

businessmen, tourists or other persons legally present on the EU territory effectively. With regard to migration matters, the main measure included the abolition of checks at the Union's internal borders, while tightening controls at the external borders, in accordance with a single set of rules.

At the heart of the Schengen mechanism, an information system was set up: the Schengen Information System (SIS). SIS is a sophisticated database used by the authorities of the Schengen member countries to exchange data on certain categories of people and goods.

Since the coming-into-force of the EU Convention on mutual legal assistance of 29 May 2000, and its Protocol, mutual legal assistance between the member states of the EU is mainly based on these legal instruments as well as on the Convention implementing the Schengen Agreement (CISA).

Regarding border control at the moment, various new measures are proposed under the so-called 'European Integrated Border Management'. New initiatives include the introduction of an entry/exit system, the facilitation of border crossing for bona fide travellers, the development of a European Border Patrols Network, the creation of a European Border Surveillance System (EUROSUR), the use of passenger name records for law enforcement purposes.

Furthermore, access of the law enforcement to the Visa Information System (VIS, see above) is envisaged.

Training content

Training on the Schengen Convention and its protocols should include the following fields:

- Schengen Acquis: General background, associated countries, opt-ins and opt-outs
- Schengen Convention (CISA)
- Extradition
- Schengen Information Systems: SIS I, SISone4all, SIS II
- Certain specific forms of mutual assistance
- Cross border surveillance
- Cross border pursuit
- Data exchange

2. Instruments and Case Law

a. General

- Updated Catalogue of Recommendations for the correct application of the Schengen Acquis and Best practices: Police cooperation (25.01.2011; 15785/2/10)
- Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (2010/252/EU) (OJ L 111/20; 4.5.2010)
- Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions Preparing the next steps in border management in the European Union of 13.2.2008 (COM(2008) 69 final)
- Commission Recommendation of 6 November 2006 establishing a common “Practical Handbook of Border Guards (Schengen Handbook)” to be used by Member States’ competent authorities when carrying out the border control of persons (C(2006) 5186 final) as amended by Commission Recommendation of 25 June 2008 (C(2008) 2976 final)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code of the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p.1) as amended by regulation (EC) No 296/2008 of the European Parliament as regards the implementing powers conferred on the Commission (OJ L 97, 9.4.2008, 60)
- The Schengen Acquis as referred to in Article 1(2) of Council Decision 1999/435/EC of 20 May 1999 (OJ L 239/1, 22.9.2000)
- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, 19–62)
- Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis (corrigendum) (20 May 1999)
- Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on

European Union, the legal basis for each of the provisions or decisions which constitute the *acquis* (20 May 1999)

b. Schengen Information System (SIS)

- Council Decision of 29 June 2010 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 166, 1.7.2010, 17)
- Reintroduction of border controls under Articles 23 et seq. of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), (27.05.2010, 8584/10)
- 2010/252/: Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 111, 4.5.2010, 20–26)
- Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis* (COM(2009)102 final; 4.3.2009)
- Proposal for a Council Decision on the establishment of an evaluation mechanism to monitor the application of the Schengen *acquis* (COM(2009)105 final; 4.3.2009)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code of the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p.1) as amended by regulation (EC) No 296/2008 of the European Parliament as regards the implementing powers conferred on the Commission (OJ L 97, 9.4.2008, 60)
- Analysis of the impact of SISone4ALL on the SIS1+ and SIS II projects from the Council Secretariat in Brussels, (20.11.2006; 14773/06)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)(OJ L 105/1; 13.4.2006)
- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic

of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, 19 – 62)

- Regulation (EC) No 1160/2005 of the European Parliament and of the Council of 6 July 2005 amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles (Text with EEA relevance) (OJ L 191, 22.7.2005, 18)
- Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 68, 15.3.2005)

c. Schengen Information System II (SIS II)

- CEPS Paper: The Difficult Road to the Schengen Information System II: The legacy of ‘laboratories’ and the cost for fundamental rights and the rule of law, Joanna Parkin (April 2011)
- Commission staff working document, Report on the global schedule and budget for the entry into operation of the second generation Schengen Information System (SIS II), SEC(2010) 1138 final, Brussels, 21.09.2010.
- Council note from the Austrian and German delegations on the further direction of SIS II, no. 10833/10 of 7 June 2010.
- Council Regulation (EU) No 541/2010 of 3 June 2010 amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (OJ L 155 22.06.2010, 19)
- Council Regulation 542/2010 amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) OJ L 155/23, 22.6.2010
- Press release, 3018th Council meeting Justice and Home Affairs, 3-4 June 2010
- Council Conclusions on SIS II (6.05.2010; 8932/1/10)
- Report from the Commission to the European Parliament and the Council on the development of the second generation Schengen Information System (SIS II) - Progress Report July 2009 - December 2009 (COM(2010)0221 final; 6.5.2010)

- 2010/261/: Commission Decision of 4 May 2010 on the Security Plan for Central SIS II and the Communication Infrastructure (OJ L 112, 5.5.2010, 31)
- Report on the proposal for a Council regulation amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System A7-0127/2010, 29.04.2010.
- Council Regulation amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (31.03.2010; 9925/10)
- Council Regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (31.03.2010; 9920/10)
- Council Conclusions on SIS II, 2927th Justice and Home Affairs Council meeting, 26 and 27 February 2009
- Second generation of Schengen Information System (SIS II) Implementation of measures (03.02.2009; 6067/09)
- Council Decision on the tests of the second generation Schengen Information System (SIS II) (13.02.2008; 6071/08)
- Council Regulation on the tests of the second generation Schengen Information System (SIS II) (09.01.2008; 5135/08)
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007)
- Commission Decision of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar) (OJ L 79, 20.3.2007)
- Council Decision 2006/1007/JHA of 21 December 2006 amending Decision 2001/886/JHA on the development of the second generation Schengen Information System (SIS II) (OJ L 27, 2.2.2007, 43)
- Council Regulation (EC) No 1988/2006 of 21 December 2006 amending Regulation (EC) No 2424/2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 27/3; 2.2.2007)
- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381 , 28.12.2006, 4-23)

- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ L 381, 28.12.2006, 1-3)
- Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 068; 15/03/2005)
- Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 328, 13.12.2001, 4)

d. Case Law

- *Commission v Spain*, [Case C-503/03](#), 31 January 2006: Freedom of movement for persons – Directive 64/221/EEC – National of a third country who is the spouse of a national of a Member State – Right of entry and residence – Restriction imposed on grounds of public policy – Schengen Information System – Alert issued for the purposes of refusing entry

3. Trainers

Trainers for this topic should be EU experts and national practitioners.

4. Trainees

This topic can be especially recommended for junior judges and prosecutors, and future/trainee judges and prosecutors

5. Methodology

A. Training Method

The Schengen Convention and its protocols serves as important background information for a better understanding of free movement of persons, a fundamental right guaranteed by the EU to its citizens. It also seeks to harmonize the conditions of entry and of the rules on visas for

short stays (up to three months), enhance police cooperation (including rights of cross-border surveillance and hot pursuit) and strengthen judicial cooperation through a faster extradition system and transfer of enforcement of criminal judgments. Thus general knowledge of the instrument should be provided. Hence, the methods recommended for this area are basic seminars and distance learning courses.

B. Complementary e-learning

Training on this legal instrument can be completed by e-learning.

C. Priority

Training should have priority.

D. Format

The recommended training format includes local, regional and national training.

CHAPTER V

TAX LAW

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1. Introduction

Taxation Law in the EU Treaties

Few people are aware of the genuine impact of European Law on the national legal orders of the Member States. This assumption becomes very significant when applied to national tax systems, in particular with respect to direct taxes.

Recent years have shown a significant and increased number of requests for preliminary rulings in taxation matters from the CJEU. Today, according to the statistics of the Court of Justice, taxation has become the leading and most numerous case-law on free movement of the internal market.

All these cases have underlined that the direct tax systems of Member States on personal tax and corporate tax can also amount to genuine obstacles to the free movements of person, goods, services and capital within the internal market whenever a cross-border or transnational element is involved. Since 1980, a large number of domestic tax measures have been identified as being incompatible with EU law (formerly EC law).

A European strategy to avoid these obstacles and discrimination has been developed during the last 20 years by the European Commission¹, in order to improve the functioning of the freedoms of the internal market.⁶

Regarding the legal references in the EU Treaties to taxation, it becomes necessary to make a distinction between indirect taxation and direct taxation.

⁶ The first two legislative acts from the EC in the area of income taxation were approved in 1990: the EC Parent-Subsidiary Directive (Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. Official Journal L 225 , 20/08/1990 P. 0006 – 0009; amended by the Council Directive 2003/123/EC of 22 December 2003. Official Journal L 007 , 13/01/2004 P. 0041 – 0044) and the EC merger Directive (Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States. Official Journal L 225 , 20/08/1990 P. 0001 – 0005; amended by the Council Directive 2005/19/EC of 17 February 2005. Official Journal L-58, 4/03/2005, P. 19-27).

Concerning indirect taxation, the EU Treaties explicitly enumerate the European Union legislative competences. Special mention is given to the option open to the Council, acting unanimously in accordance with a special legislative procedure, to adopt provisions for the harmonisation of Member States' legislation in the area of indirect taxation (Article 113 TFEU)⁷. As a result of this, there is an important number of directives and regulations adopted in this area.⁸

On the contrary, there is no provision in the Treaties which explicitly provides that the European Union may exercise its competence in the domain of *direct taxation*. Consequently, this area would seem to be outside the scope of application of European Law. However, it has been established over time and can be concluded that direct taxation is not a strict sovereignty area of exclusive competence by the Member State as there is a clear impact and interaction between EU Treaties, the role of the Court of Justice of the European Union in this area and the effect of the national tax systems of the Member States in the normal functioning of the internal market.

The first element of this interaction, for individual and corporate incomes taxes, was expressly mentioned by the Court: *“It must be borne in mind that, according to settled case-law, although direct taxation is a matter within the competence of the Member States, they must none the less exercise that competence in a manner consistent with Community law (see, inter alia, Marks & Spencer, paragraph 29; Case C-374/04 Test Claimants in Class IV of the ACT Group Litigation [2006] ECR I-11673, paragraph 36; and Case C-182/08 Glaxo Wellcome [2009] ECR I-0000, paragraph 34).”*⁹

Thus, it is apparent from the foregoing that the tax systems of Member States must respect the fundamental Treaty principles on the free movement of workers, of services, of capital, and

⁷ Article 113 TFEU (ex Article 93 TEC) „The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.”

⁸ The first VAT Directive was adopted in 1967: Council Directive 6/227 (1967) OJ L71/1301. The legislation currently in force is the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJEU, L 347, 11 December 2006.

⁹ Some of these settled case-law: C-337/08 X Holding (2010), ECR I-272, paragraph 16; Case C-35/98 Verkooijen (2000) ECR I-4071, paragraph 32; Metallgesellschaft and Others, paragraph 37; and Case C- 471/04 Keller Holding [2006] ECR I-2107, para. 28.

the freedom of establishment (Articles 45, 49, 56 and 63 TFEU) as well as the principle of non-discrimination.

The decisions of the Court constitute the so-called negative integration, a legal instrument with an essential role in the integration process and which serves to uphold the right to both free movement and non-discrimination in that it allows for the making of a declaration of incompatibility of a national tax measure which constitutes a tax-based obstacle to European integration. The negative integration removes the disparities between the national tax systems of Member States in the same way as positive integration achieves this by means of Community/Union legislation. The directly applicable right to free movements and the directly applicable right to the principle of non-discrimination bring direct taxation within the scope of application of European Law.

The European Economic Area Agreement extends the principles of free movement of goods, persons, services and capital, as well as the effect of the principle of non-discrimination, to individuals and enterprises of EEA States (Iceland, Liechtenstein and Norway).

The second element of this interaction is the indirect method of finding a legal reference for direct taxation matters included in the Treaties,¹⁰ even if there is not such a specific provision as for indirect taxation.

Article 115 TFEU¹¹ allows, acting unanimously in accordance with a special legislative procedure, for the creation of directives for the approximation of laws, regulations or

¹⁰ As a general reference, Article 5 TUE (e.g. Article 5 TEC) is repeatedly mentioned in this regard: « 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

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

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

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

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

¹¹ Article 115 TFEU (e.g. Article 94 TEC) “Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.”

administrative provisions of the Member States which affect directly the establishment or functioning of the internal market (i.e. legislation adopted in the area of mutual assistance, exchange of information and cooperation in taxation areas).

In addition, Article 352 TFEU¹² also provides the Council with the possibility, acting unanimously, to adopt appropriated measures to attain the objectives of the Treaties if the necessary powers to do so are not specifically mentioned. This article has been and is the legal basis for the adoption of regulations involving specific tax provisions.

2. Instruments and Case Law

A. Landmark CJEU Judgments on Direct Taxation

This sub-chapter provides participants with a detailed overview of the landmark judgments of the CJEU on corporate taxation, assessing their practical impact on the national tax systems.

The first decisions of the Court in *Daily Mail*, *Biehl*, *Werner*, *Bachmann*, *Schumacker*, *Wielockx*, *Asscher*, *Commerzbank*¹³ sent a significant message to the Member States: the rights of free movements and the principle of nondiscrimination are capable of overriding national tax measures.

The fundamental case-law in direct taxation has developed some basic concepts to understand the structure of the CJEU cases and the influence of the fundamental freedoms for direct taxation including the principle of non-discrimination, restriction, justifications, balance of

¹² Article 352 TFEU (ex Article 308 TEC) “1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments’ attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonization of Member States’ laws or regulations in cases where the Treaties exclude such harmonization.

4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.”

¹³ 827.09.1988 C-81/87 *Daily Mail*, ECR 1988, p. 5505; 08.05.1990 C-175/88 *Biehl*, ECR 1990, p. I-1779 28.01.1992 C-204/90 *Bachmann*, ECR 1992, p. I-249; 26.01.1993 C-112/91 *Werner*, ECR 1993, p. I-429 14.02.1995; C-279/93 *Schumacker*, ECR 1995, p. I-225, 249; 11.08.1995 C-80/94 *Wielockx*, ECR 1995, p. I- 2508; 27.06.1996 C-107/94 *Asscher*, ECR 1996, p. I-3089; 13.07.1993 C-330/91 *Commerzbank*, ECR 1993, p. I-4017.

taxing powers, the most favoured nation treatment, fiscal coherence, comparable situation, among others.

(1) Individual Income Tax

a. Workers

i. Taxation of cross-border workers

- [Case C-175/88](#) *Biehl* [1990] ECR I-01779
- [Case C-279/93](#) *Schumacker* [1995] ECR I-00225
- [Case C-107/94](#) *Asscher* [1996] ECR I-03089
- [Case C-336/96](#) *Gilly* [1998] ECR I-02793
- [Case C-391/97](#) *Gschwind* [1999] ECR I-05451
- [Case C-87/99](#) *Zurstrassen* [2000] ECR I-03337
- [Case C-234/01](#) *Gerritse* [2003] ECR I-05933
- [Case C-169/03](#) *Wallentin* [2004] ECR I-06443
- [Case C-329/05](#) *Meindl* [2007] ECR I-01107

ii. Pension taxation

- [Case C-204/90](#) *Bachmann* [1992] ECR I-00249
- [Case C-80/94](#) *Wielockx* [1995] ECR I-02493
- [Case C-118/96](#) *Safir* [1998] ECR I-01897
- [Case C-136/00](#) *Danner* [2002] ECR I-08147
- [Case C-422/01](#) *Skandia/Ramstedt* [2003] ECR I-06817
- [Case C-520/04](#) *Turpeinen* [2006] ECR I-10685

b. Shareholders

i. Taxation of dividends

Inbound dividends

- [Case C-35/98](#) *Verkooijen* [2000] ECR I-04071
- [Case C-319/02](#) *Manninen* [2004] ECR I-07477
- [Case C-262/09](#) *Meilicke* [2011] ECR I-00000
- [Case C-292/04](#) *Meilicke* [2007] ECR I-01835
- [Case C-513/04](#) *Kerckhaert-Morres* [2006] ECR I-10967

- [Case C-446/04](#) *Test Claimants in the FII* [2006] ECR I-11753
- [Case 1/04](#) *Focus Bank E* [2006] ECR I-00701
- [Case C-374/04](#) *Test Claimants in class IV of the ACT Group Litigation* [2006] ECR I-11673
- [Case C-170/05](#) *Denkavit Internationaal* [2006] ECR I-11949

ii. Taxation of shares

Capital gains of individuals

- [Case C-265/04](#) *Bouanich* [2006] ECR I-00923
- [Case C-9/02](#) *Lasteyrie du Saillant* [2004] ECR I-02409
- [Case C-470/04](#) *N* [2006] ECR I-07409

(2) Corporate Income Tax

i. Tax treatment of Branches and Subsidiaries

- [Case C-270/83](#) *Avoir Fiscal* [1986] ECR I-00273
- [Case C-307/97](#) *Saint-Gobain* [1999] ECR I-06161
- [Case C-311/97](#) *Royal Bank of Scotland* [1999] ECR I-02651
- [Case C-253/03](#) *CLT-UFA SA* [2006] ECR I-01831
- [Case C-330/91](#) *Commerzbank* [1993] ECR I-04017
- [Case C-81/87](#) *Daily Mail* [1988] ECR 05483
- [Case C-293/06](#) *Deutsche Shell* [2008] ECR I-01129
- [Case C-324/00](#) *Lankhorst-Hohorst* [2002] ECR I-11779
- [Joined Cases C-397/98 and C-410/98](#) *Metallgesellschaft/Hoechst* [2001] ECR I-01727
- [Case C-446/03](#) *Marks & Spencer* [2005] ECR I-10837
- [Case C-196/04](#) *Cadbury Schweppes* [2006] ECR I-07995
- [Case C-201/05](#) *Test Claimants in CFC* [2008] ECR I-02875
- [Case C-311/08](#) *SIGI* [2010] ECR I-00487
- [Joined Cases C-436/08 and C437/08](#) *Haribo & Salinen* [2011] ECR I-00000

ii. Cross-border restructuring operation

- [Case C-28/95](#) *Leur-Bloem* [1997] ECR I-04161
- [Case C-43/00](#) *Andersen and Jensen ApS* [2002] ECR I-00379

iii. Cross-border loss relief within groups

- [Case C-141/99](#) *AMID* [2000] ECR I-11619
- [Case C-250/95](#) *Futura and Singer* [1997] ECR I-02471
- [Case C-264/96](#) *ICI Ruling* [1998] ECR I-04695
- [Case C-446/03](#) *Marks & Spencer* [2005] ECR I-10837
- [Case C-200/98](#) *X and Y* [1999] ECR I-08261
- [Joined cases C-397/98 and C-410/98](#) *Metallgesellschaft* [2001] ECR I-01727
- [Case C-168/01](#) *Bosal Holding BV* [2003] ECR I-09409
- [Case C-347/04](#) *Rewe Zentralfinanz* [2007] ECR I-02647
- [Case C-471/04](#) *Keller holding* [2006] ECR I-02107
- [Case C-231/05](#) *Oy AA.* [2007] ECR I-06373
- [Case C-414/06](#) *Lidl Belgium* [2008] ECR I-03601
- [Case C-337/08](#) *X Holding BV* [2010] ECR I-01215

B. Landmark CJEU Judgments on VAT

This sub-chapter provides participants with a detailed overview of the landmark judgments of the CJEU on VAT. Fundamental concepts of the VAT system developed like supply of services, supply of goods, exemptions, right of deduction, invoice rules and liability.

(1) Basic concepts: taxable person, supply and place of supply

- [Case C-16/93](#) *Tolsma* [1994] ECR I-00743
- [Case C-60/90](#) *Polysar* [1991] ECR I-03111
- [Case C-384/95](#) *Landboden Agrarendienst* [1997] ECR I-07387
- [Case C-355/06](#) *Van der Steen* [2007] ECR I-08863
- [Case C-210/04](#) *FCE Bank* [2006] ECR I-02803
- [Case C-186/89](#) *Van Tiem* [1990] ECR I-04363
- [Case C- 269/86](#) *Mol* [1988] ECR 03627
- [Case C-320/88](#) *Safe* [1990] ECR I-00285
- [Case C-97/90](#) *Lennartz* [1991] ECR I-03795
- [Case C-168/84](#) *Berkholz* [1985] Page 02251
- [Case C-8/03](#) *BBL* [2004] ECR I-10157
- [Case C-37/08](#) *RCI* [2009] ECR I-07533
- [Case C-430/09](#) *Euro Tyre Holding BV* [2012] ECR I-00000

(2) The right of deduction

- [Case C-268/83](#) *Rompelman* [1985] ECR 00655
- [Case C-32/03](#) *I/S Fini H* [2005] ECR I-01599
- [Case C-465/03](#) *Kretztechnik* [2005] ECR I-04357
- [Case C-333/91](#) *Satam* [1993] ECR I-03513
- [Case C-342/87](#) *Genius Holding* [1989] ECR I-04227
- [Case C-90/02](#) *Bockemuehl* [2004] ECR I-03303
- [Case C-98/98](#) *Midland bank* [2000] ECR I-04177

(3) Exemptions without right of deduction

- [Case C-348/87](#) *Sufa* [1989] ECR I-01737
- [Case C-453/93](#) *Bulthuis Griffioen* [1995] ECR I-02341
- [Case C-237/09](#) *De Fruytier* [2010] ECR I-04985
- [Case C-216/97](#) *Gregg and Gregg* [1999] ECR I-04947
- [Case C-253/07](#) *Canterbury Hockey Club* [2008] ECR I-07821
- [Case C-464/10](#) *Henfling, Davain, Tanghe* [2011] ECR I-00000
- [Case C-451/06](#) *Gabrielle Walderdorff* [2007] ECR I-10637

(4) Carousel Fraud

- [Joined Cases C-439/04 and C-440/04](#) *Kittel and Recolta Recycling* [2006] ECR I-06161
- [Case C-384/04](#) *Federation of technological industries (FTI)* [2006] ECR I-04191
- [Joined Cases C-354/03, C-355/03 and C-484/03](#) *Optigen* [2006] ECR I-00483

(5) Abusive Practices

- [Case C-103/09](#) *Weald Leasing* [2012] ECR I-00000
- [Case C-277/09](#) *RBS Deutschland Holdings* [2012] ECR I-00000
- [Case C-425/06](#) *Part Service* [2008] ECR I-00897
- [Case C-255/02](#) *Halifax and Others* [2006] ECR I-01609
- [Case C-223/03](#) *Huddersfield* [2006] ECR I-01751
- [Case C-419/02](#) *BUPA* [2006] I-01685

- [Case C-260/95 DSDF](#) [1997] ECR I-01005

3. Trainers

[ADD]

4. Trainees

The courses are suitable for all members of the judiciary who wish to gain a detail understanding of this topic.

- A) *Senior judges and prosecutors* with some or long standing experience in this field in their daily juridical work.
- B) *Junior judges and prosecutors*, just starting their career within the jurisdiction as well as persons that have started a magistrate's training at a national training institution with the aim of becoming judges or public prosecutors.

5. Methodology

Especially with regard to direct taxation in the EU, cross-border situations are becoming more and more usual and complex. According to the knowledge and experience of the participants, basic and specialised seminars should be preferable. The added value of these courses is the possibility to exchange experience and to workshops with members of the judiciary from different Member States with experience in preliminary rulings on the field of European direct taxation. To share experience, with a good understanding of the national tax system and the potential problems and questions raised at EU level could definitively enhance the national capacities and provide a network of good contacts.

A.1. Training methods recommended for beginners in this field: Basic seminar

A *Basic seminar* should offer an introduction of the respective field of law. Their optimal length should range between 3-5 days. The aim of this basic seminar is to introduce participants to the main concepts and principles, to the most relevant instruments and allow them to gain a comprehensive understanding of this complex field. This training should

combine the analysis of the case-law of the CJEU and case studies, on a basic level, to ensure the knowledge of a good understanding and practical application of the main tax issues.

Tax is a very technical area which requires a good knowledge of particular words and expressions, combined in an often seemingly peculiar logic. In order to make a first training course on European taxation law accessible to a large group of potential participants, it is suggested that a basic seminar is the most suitable format. During this basic seminar, and according to the participant's relevant day-to-day work in this field, a more specific seminar could be planned focused on certain topics introduced in greater depth with the development of more complex case studies.

This basic seminars could be combined with a *first step complementary eLearning course* with the aim of provide a brief introduction to the topics, the background documentation and a glossary of the concepts which would be developed during the training and which can be tested by multiple-choice questions.

In addition, the *attendance of a court hearing at the CJEU* is essential as a complement to this training to better understand how the CJEU deals with a tax case, the main parties involved and the arguments underlined at the hearing. Prior to the hearing, a short presentation of the case of the hearing could be introduced to the participants by a member/staff of the Court (legal secretary).

A.2. Training methods recommended for expert in this field

For those trainees with a long standing experience in this field in their daily work a more complex methodology should be suitable to gain a high level understanding of the field.

(1) Specialized Seminars

Specialized seminars with an optimal length of 2-3 days. The objective should be to offer an in-depth training on a very specific topic, including case studies and workshops, the main training however would consist of presentations of the respective topics from the practical perspective. Specialized seminars can be combined with complementary e-learning courses to permit participants to start the course at the same level of knowledge by offering them initial

introductory training at home. This training can consist of explanatory papers on the topic, the basic background documentation and multiple-choice questions test.

(2) Workshops

Workshops, of 1-2 days, should focus on just practical training with case studies, moot courts and other role-play training activities.

In this framework, the e-learning tool can provide a method to prepare participants in depth, so that during the workshop, time can be exclusively devoted to the comprehension of the problems, and the better way to solve them with or without access to the CJEU.

(3) Study Visits

Study visits will offer participants the opportunity to obtain a realistic insight into the daily work of the Court of Justice of the European Union as well as national courts dealing with taxation cases. This experience will lead to a better understanding of the role these institutions can play to apply EU law and to support practitioners in their request for a preliminary ruling proceeding. The institutions with special significance for the purposes of these guidelines are:

- The Court of Justice of the European Union;
- EFTA Court (jurisdiction with regard to EFTA States parties to the EEA Agreement: Iceland, Liechtenstein and Norway);
- European Court of Human Rights (ECHR) and the rights of citizens in tax litigation.

CHAPTER VI

ENVIRONMENTAL LAW

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I. PRINCIPLES OF EUROPEAN ENVIRONMENTAL LAW

1. Introduction

A. General Principles of Union Law in Relation to Environmental Protection

General principles of law are an important source of law in public international law including EU law and an interpretive guide in the national law of civilian states. They are used deductively and as guides to applying the law. The adjective ‘general’ refers here, first, to the fact that the respective principle of law is inherent in a series of infinite applications of the law. A general principle of law is, in comparison with a principle of law, of a more general character, applicable to a greater variety of different cases. Second, the word ‘general’ refers to the fact that the principle of law must be perceived as having some universal quest. What makes a principle of law general or universal in the context of EU law is, in other words, the fact that the principle of law is also present in other national or international systems of law.

(1) The subsidiarity principle

The subsidiarity principle (Article 5 TEU) is one of the central principles in the EU context, laying down that political decisions in the EU must always be taken at the lowest possible administrative and political level, and as close to the citizens as possible. Other than the areas where the EU has exclusive competence, this means that the EU can only act if it would be

better to implement the legislation in question at EU rather than at national, regional or local level.

(2) The principle of proportionality

Similarly to the principle of subsidiarity, the principle of proportionality regulates the exercise of powers by the European Union. It seeks to set actions taken by the institutions of the Union within specified bounds. Under this rule, the involvement of the institutions must be limited to what is necessary to achieve the objectives of the Treaties. In other words, the content and form of the action must be in keeping with the aim pursued. The principle of proportionality is laid down in Article 5 TEU. The criteria for applying it is set out in the Protocol (No 2) on the application of the principles of subsidiarity and proportionality annexed to the Treaties.

(3) Equal treatment

This general principle of equal treatment requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified.

B. The Principles of European Environmental Policy

Article 191 (2) TFEU sets out the principles on which European environmental policy is based:

(1) The precautionary principle

This principle means in cases when there is a strong suspicion that a certain activity may have environmentally harmful consequences, it is better to act before it is too late rather than to wait until incontrovertible scientific evidence of harm is available. In other words, the principle of precaution may therefore justify action to prevent damage in some cases even though the causal link cannot be clearly established on the basis of available scientific evidence.

(2) Prevention Principle

The prevention principle allows action to be taken to protect the environment at an early stage. It is no longer primarily a question of repairing damage after it has occurred. Instead the principle calls for measures to be taken to prevent damage occurring at all.

(3) The Source Principle

The source principle states that any form of pollution should be treated as closely as possible to the source. Thus, air pollution should be remedied by stack scrubbers at the source. Water pollution should be remedied by filters at the source. According to the source principle, damage to the environment should preferably not be prevented by using end-of-pipe technology.

(4) The Polluter Pays Principle

The essence of the polluter pays principle is that the polluter should pay, that means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution. The principle that the polluter shall pay is thoroughly economic and is not punitive (though it could also evolve into a principle of penal law) but rather restitutionary.

Training contents

- Difference between the “general Principles” and the “principles of European Environmental Law”
- Difference between “general Principle” and the “rule of law”
- Applicability of general principles and the principles of European Environmental Law in the judiciary
- General Principles of Union Law in Relation to Environmental Protection
 - The subsidiarity principle
 - The principle of proportionality
 - Equal treatment
- Principles of European Environmental Law:
 - Precautionary principle
 - The Principle of Prevention
 - The Source Principle
 - The polluter pays principle

2. Instruments and Case Law

A. Basic Documents

- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ 2010/C 83/01)

B. Case Law

- [Case T-219/95 R](#), Order of the President of the Court of First Instance of 22 December 1995, Marie-Thérèse Danielsson, Pierre Largeteau and Edwin Haoa v Commission of the European Communities
- [Case C-341/95](#), Judgment of the Court of 14 July 1998, Gianni Bettati v Safety Hi-Tech Srl., Reference for a preliminary ruling: Pretura circondariale di Avezzano – Italy
- [Case C-92/79](#), Judgment of the Court of 18 March 1980, Commission of the European Communities v Italian Republic
- [Case C-240/83](#), Judgment of the Court of 7 February 1985, Procureur de la République v Association de défense des brûleurs d'huiles usagées (ADBHU)
- [Case C-302/86](#), Judgment of the Court of 20 September 1988, Commission of the European Communities v Kingdom of Denmark
- [Case C-213/96](#), Judgment of the Court of 2 April 1998, Outokumpu Oy. Reference for a preliminary ruling: Uudenmaan lääninoikeus - Finland
- [Case C-176/03](#), Judgment of the Court (Grand Chamber) of 13 September 2005, Commission of the European Communities v Council of the European Union
- [Joined Cases C-14/06 and C-295/06](#), Judgment of the Court (Grand Chamber) of 1 April 2008, European Parliament (C-14/06) and Kingdom of Denmark (C-295/06) v Commission of the European Communities
- [Case C-155/91](#), Judgment of the Court of 17 March 1993, Commission of the European Communities v Council of the European Communities.
- [Case C-187/93](#), Judgment of the Court of 28 June 1994, European Parliament v Council of the European Union
- [Case C-247/85](#), Judgment of the Court of 8 July 1987, Commission of the European Communities v Kingdom of Belgium

- [Case C-205/08](#), Judgment of the Court (Second Chamber) of 10 December 2009, *Umweltanwalt von Kärnten v Kärntner Landesregierung*, Reference for a preliminary ruling: *Umweltsenat - Austria*
- [Case C-377/98](#), Judgment of the Court of 9 October 2001, *Kingdom of the Netherlands v European Parliament and Council of the European Union*
- [Joined Cases C-154/04 and C-155/04](#), Judgment of the Court (Grand Chamber) of 12 July 2005, *The Queen, on the application of Alliance for Natural Health and Nutri-Link Ltd v Secretary of State for Health (C-154/04) and The Queen, on the application of National Association of Health Stores and Health Food Manufacturers Ltd v Secretary of State for Health and National Assembly for Wales (C-155/04)*. Reference for a preliminary ruling: *High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) - United Kingdom*
- [Case C-58/08](#), Judgment of the Court (Grand Chamber) of 8 June 2010, *The Queen, on the application of Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform*
- [Case C-76/08](#), Judgment of the Court (Second Chamber) of 10 September 2009, *Commission of the European Communities v Republic of Malta*.
- [Case C- 293/97](#), Judgment of the Court (Fifth Chamber) of 29 April 1999, *The Queen v Secretary of State for the Environment and Ministry of Agriculture, Fisheries and Food, ex parte H.A. Standley and Others and D.G.D. Metson and Others*. Reference for a preliminary ruling: *High Court of Justice (England & Wales), Queen's Bench Division - United Kingdom*
- [Case C-331/88](#), Judgment of the Court (Fifth Chamber) of 13 November 1990, *The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others*. Reference for a preliminary ruling: *High Court of Justice, Queen's Bench Division - United Kingdom*
- [Case T- 229/ 04](#), Judgment of the Court of First Instance (Second Chamber, extended composition) of 11 July 2007, *Kingdom of Sweden v Commission of the European Communities*
- [Case C- 121/ 07](#), Judgment of the Court (Grand Chamber) of 9 December 2008, *Commission of the European Communities v French Republic*
- Cases [C- 157/ 96](#), [C- 180/ 96](#), [C- 236/ 01](#) Judgment of the Court of 5 May 1998, *The Queen v Ministry of Agriculture, Fisheries and Food, Commissioners of Customs & Excise, ex parte National Farmers' Union, David Burnett and Sons Ltd, R. S. and E.*

Wright Ltd, Anglo Beef Processors Ltd, United Kingdom Genetics, Wyjac Calves Ltd, International Traders Ferry Ltd, MFP International Ltd, Interstate Truck Rental Ltd and Vian Exports Ltd., Reference for a preliminary ruling: High Court of Justice, Queen's Bench Division - United Kingdom

- [Case C- 333/08](#), Judgment of the Court (Third Chamber) of 21 January 2010, Société de Gestion Industrielle (SGI) v État belge. Reference for a preliminary ruling from the Tribunal de première instance de Mons — Belgium
- [Case C- 77/09](#), Judgment of the Court (Second Chamber) of 22 December 2010, Gowan Comércio Internacional e Serviços Lda v Ministero della Salute. Reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio (Italy)
- [Case C- 6/04](#), Judgment of 20 October 2005, Commission v United Kingdom
- [Case C-127/02](#), Judgment of the Court (Grand Chamber) of 7 September 2004, Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands
- [Case C-2/90](#), Judgment of the Court of 9 July 1992, Commission of the European Communities v Kingdom of Belgium
- [Case C-422/92](#), Judgment of the Court of 10 May 1995, Commission of the European Communities v Federal Republic of Germany
- [Case C-209/98](#), Judgment of the Court of 23 May 2000, Entreprenørforeningens Affalds/Miljøsektion (FFAD) v Københavns Kommune. Reference for a preliminary ruling: Østre Landsret – Denmark
- [Cases C-378/08](#), C-379/08 and C-380/08, Judgment of the Court of 9 March 2010, Raffinerie Mediterranee (ERG) SpA v Ministero dello Sviluppo economico
- [Case C- 293/97](#), Judgment of the Court (Fifth Chamber) of 29 April 1999, The Queen v Secretary of State for the Environment and Ministry of Agriculture, Fisheries and Food, ex parte H.A. Standley and Others and D.G.D. Metson and Others. Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division - United Kingdom
- [Case C- 188/07](#), Judgment of the Court (Grand Chamber) of 24 June 2008, Commune de Mesquer v Total France SA and Total International Ltd. Reference for a preliminary ruling: Cour de cassation - France.
- [Case C-254/08](#), Judgment of the Court (Second Chamber) of 16 July 2009, Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl v

Comune di Casoria. Reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy)

- [Case C- 172/08](#), Judgment of the Court (Second Chamber) of 25 February 2010, Pontina Ambiente Srl v Regione Lazio. Reference for a preliminary ruling: Commissione tributaria provinciale di Roma - Italy.

3. Trainers

The trainers' profiles recommended for this topic are those of international experts, preferably from the European Court of Justice and academics or scholars.

4. Trainees

This topic can be especially recommended to junior judges and future/trainee judges. Senior judges might however also benefit from the training, especially in view of the developments that have taken place in relation the principles of European Environmental Law, and especially the precautionary principle.

5. Methodology

A. Training Method

Training can be carried out in the form of a basic seminar but it might not be necessary to dedicate a whole seminar to the topic. It could successfully be allocated to part (half a day, or a day) of another training course.

B. Complementary e-learning

The basic seminar can be accompanied by complementary e-learning tools.

C. Priority

It is important that judges are acquainted with the principles of EU environmental law and their applicability and this training should therefore be a top priority.

D. Format

Training can be carried out in a local, regional or national setting or on a trans-national or EU-wide basis.

II. SECTORAL REGULATION

1. Introduction

A. Air Pollution

The issue of air quality is still a major concern for many European citizens. It is also one of the areas in which the European Union has been most active. Since the early 1970s, the EU has been working to improve air quality by controlling emissions of harmful substances into the atmosphere, improving fuel quality, and by integrating environmental protection requirements into the transport and energy sectors. Poor outdoor air quality can be a contributing factor to health problems as well as damaging ecosystems, biodiversity and valued habitats. The adverse health effects from short and long-term exposure to air pollution range from premature deaths caused by heart and lung disease to worsening of asthmatic conditions, which often leads to a reduced quality of life and increased costs of hospital admissions.

The EU has set air quality limit values for a range of air pollutants and work is continuing to extend the range and ensure that existing limits are reviewed and kept up to date. The EU has recently put in place an integrated approach to air quality known as CAFE (Clean Air for Europe) that links air quality and the control of pollution sources.

EU environmental law addresses the protection of the atmosphere through a series of approaches. These include:

- Setting limits on emissions of toxic pollutants to the air from stationary sources;
- Setting limits on emissions of toxic pollutants to the air from mobile sources;
- Limiting the emissions of other substances to the atmosphere, such as greenhouse gases and substances that deplete the ozone layer;
- Setting national emission ceilings for specific pollutants;
- Setting ambient standards that should be achieved in relation to air quality.

B. Noise Pollution

Environmental noise "pollution" relates to ambient sound levels beyond the comfort levels as caused by traffic, construction, industrial, as well as some recreational activities. It can aggravate serious direct as well as indirect health effects, for example damage to hearing or sleep and later mental disorder, as well as increasing blood pressure. Noise effects can trigger premature illness and, in extreme cases, death. Night-time effects can differ significantly from day time impacts.

EU-wide action to reduce environmental noise has traditionally had a different priority compared to environmental problems such as air and water pollution also because solutions were often considered best handed at the national or local levels. Until recently, the focus of EU legislation on noise has been on limiting noise from products, rather than on setting standards for ambient background noise. In this respect, legislation to combat noise from transport has set noise standards for vehicles, motorcycles and aircraft, rather than for roads and airports. This is because EU legislation on noise management was based on internal market objectives was originally intended to avoid technical barriers to trade in the internal market caused by differing standards applied in the Member States for noisy products and equipment. As more information about the health impacts of noise became available, the need for a higher level of protection of EU citizens through further EU-wide measures became more imminent.

The Environmental Noise Directive (2002/49/EC) is one of the main instruments to identify noise pollution levels and to trigger the necessary action at Member State level. This Directive relating to the assessment and management of noise sets a common, EU-wide approach to reducing exposure to environmental noise. This shall be done through the determination of the extent of this exposure using common assessment methods and strategic noise mapping; the provision of information to the public; and the adoption of action plans to reduce noise exposure where necessary.

It is important to note, however, that the present Directive does not set binding limit values, nor does it prescribe the measures to be included in the action plans thus leaving those issues at the discretion of the competent authorities.

The Directive does not apply to noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbours, noise at work places or noise inside means of transport or due to military activities in military areas.

Directive 86/188/EEC on the protection of workers from the risks related to exposure to noise at work aims to protect workers from risks to their hearing by setting limits noise levels at which preventative action is required. The Directive applies to all workers except those in sea and air transport. Employers are required to assess and, where necessary, measure noise levels to identify workers and workplaces to which the Directive applies and to determine the conditions under which its provisions apply. Noise exposures are generally to be reduced to the lowest levels reasonably practicable, taking account of technical progress and the availability of measures to control the noise.

C. Water Protection and Management

Water is essential for human, animal and plant life and is an indispensable resource for the economy. The focus of European water policy broadens from the protection and improvement of water quality towards sustainable use of water as a natural resource, combined with the protection against flooding, protection of the marine environment, safe drinking water, and fresh water supply. European water law is now developing towards integrated water management, based on a river basin management approach. This development has its impact on the law of the national Member States.

There are a number of objectives in respect of which the quality of water is protected. The key ones at European level are general protection of the aquatic ecology, specific protection of unique and valuable habitats, protection of drinking water resources, and protection of bathing water.

Early European water legislation began in 1975 with the Drinking Water Directive, setting standards for rivers and lakes used for drinking water abstraction, and culminated in 1980 in setting binding quality targets for drinking water. It also included quality objective legislation on fish waters, shellfish waters, bathing waters and ground waters. Its main emission control element was the Dangerous Substances Directive.

EU water legislation was transformed by the adoption in 2000 of the Water Framework Directive (WFD). The WFD adopts a new holistic approach and aims to combine previous, fragmented elements of water policy. Due to the transfrontier, international character of water pollution, the main objective of the WFD is to establish a framework for the management of surface and ground water based on the river basin. The river basin model uses the natural geographical and hydrological unit as a basis for water management instead of administrative or political boundaries. The aim is long-term sustainable water management based on a high

level of protection of the aquatic environment. The Directive defines this general objective to be achieved in all surface and ground water bodies by having obtained good ecological and chemical water status by 2015, and introduces the principle of preventing any further deterioration of status. The WFD is supplemented by international agreements and various pieces of specific legislation related to water pollution, quality and quantity.

The assessment and management of flood risks is another important factor in European water policy, which was adopted as a directive in 2007. Its aim is to reduce and manage the risks that floods pose to human health, the environment, cultural heritage and economic activity. Member States are required to establish flood risk management plans, which are to be coordinated with the river basin management plans.

The right to water is recognized by the European Union as a basic human right, but will have its effect through European water directives

D. Protection of the Marine Environment

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive). This directive establishes common principles on the basis of which Member States have to draw up their own strategies, in cooperation with other Member States and third countries, to achieve a good ecological status in the marine waters for which they are responsible. These strategies aim to protect and restore Europe's marine ecosystems and to ensure the ecological sustainability of economic activities linked to the marine environment. Europe's seas may be divided into four regions (with possible sub-regions): the Baltic Sea, the North-East Atlantic, the Mediterranean and the Black Sea. In each region and possibly in the sub-regions to which they belong, the Member States concerned must coordinate their actions with each other and with the third countries involved. To this end they can benefit from the experience and capabilities of existing regional organisations.

E. Waste Management

Waste legislation in the European Union member states derives in large measure directly from European Community directives and regulations. A thorough understanding of the applicable European law is therefore essential for all those involved in waste management and their legal

advisers. Waste management in Europe today is largely influenced by a series of European regulations that are based on a waste management hierarchy which favours prevention at source. The revision of the Waste Framework Directive 2008/98/EC which entered into force in December 2008 has consolidated the primary role of waste prevention. Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with this revised Directive by 12 December 2010.

The revised Directive has laid down a five-step hierarchy of waste management options which must be applied by Member States when developing their national waste policies:

- Waste prevention
- Preparing for re-use
- Recycling
- Recovery (including energy recovery)
- Safe disposal, as a last resort

Shipment of Waste

The shipment of waste is regulated both at EU and international level.

In order to understand the full environmental and economic impacts of waste shipments, it is essential to know what categories of waste are shipped and where the waste is going. At international level, transboundary shipments of waste are governed by the UN by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The aim of the Convention is to protect human health and the environment from adverse effects caused by wastes, especially hazardous wastes, and the transboundary shipments of these wastes. The Convention also covers proper management of these wastes. It underlines that transboundary shipments of hazardous wastes to developing countries, many of which are incapable of handling such waste, do not constitute environmentally sound management as required by the Convention. Export of hazardous wastes from OECD countries to non-OECD countries is specifically prohibited according to the export ban amendment to the Convention. The Convention is implemented by the EU via the Waste Shipment Regulation.

F. Nature Conservation and Species Protection

There are a wide range of political commitments within the EU aiming at protecting nature and biodiversity, with species conservation at the forefront. In order to achieve its objectives,

the Habitats Directive provides for two main instruments: the Natura 2000 network of protected sites and the species protection provisions under the Birds and Habitats Directives. The provisions for species protection apply to the whole of a Member State's territory and concern the physical protection of specimens as well as their breeding sites and resting places. Both regimes allow for exceptions under certain conditions. Both instruments are complementary and jointly aim to ensure a favourable conservation status for all species of Community interest.

Effective implementation of Article 5 of the Birds Directive and Article 12 of the Habitats Directive requires full, clear and precise transposition by Member States.

The Habitats Directive (together with the Birds Directive) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. All in all the directive protects over 1.000 animals and plant species and over 200 so called "habitat types" (e.g. special types of forests, meadows, wetlands, etc.), which are of European importance.

Infringements of the provisions of both, Habitat and Birds Directives led to numerous judgements of the CJEU which is why it is important to improve the understanding of judges on the essence of the directives.

G. Industrial Emissions

The largest industrial installations account for a considerable share of 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. Emissions from industrial installations have therefore been subject to EU-wide legislation for some time and currently the following main pieces of legislation apply in this field:

- The IPPC Directive concerning integrated pollution prevention and control. The IPPC Directive sets out environmental performance criteria for each activity which operators need to meet, fixed through permits delivered by the Member States. The regulatory framework is considered as the main driver for boosting the EU's eco-industry (i.e. pollution prevention, control and management).
- Several sectoral directives (3 Titanium Dioxide Directives (78/176/EEC, 82/883/EEC and 92/112/EEC on waste from the titanium dioxide industry); Volatile Organic Compounds (VOC) Solvents Directive (99/13/EC); Waste Incineration Directive (2000/76/EC); and Large Combustion Plants (LCP) Directive (2001/80/EC) which lay

down specific minimum requirements, including emission limit values for certain industrial activities

- The Regulation on the European Pollutant Release and Transfer Register (E-PRTR), which makes accessible to the public detailed information on the emissions and the off-site transfers of pollutants and waste from approx. 24 000 industrial facilities.

Until 2010, the Integrated Pollution Prevention and Control Directive (IPPC) was the EU's main regulatory instruments to tackle harmful emissions into the environment. Although the existing framework has delivered significant pollution reduction, many Member States had fallen well behind schedule in delivering permits. Furthermore, sharp differences were evident in the strictness of implementation of the BREF benchmarks, while vague language left little scope for the Commission to pursue infringement procedures. The IPPC framework was replaced by the new Industrial Emission Directive (IED) on 24 November 2010. It entered into force on 6 January 2011 and has to be transposed into national legislation by Member States by 7 January 2013.

The IED replaces the IPPC Directive and the sectoral directives as of 7 January 2014, with the exemption of the LCP Directive, which will be repealed with effect from 1 January 2016. The new law sets stricter limits on the pollutants that industrial installations are allowed to spew into the air, water and soil. It limits atmospheric pollutants such as nitrogen oxides (NO_x), sulphur dioxide (SO₂) and dust, which are responsible for acid rain and smog and cause respiratory diseases like asthma. The IED has the potential to become the main emission prevention instrument the EU has in relation to large industrial activities. It applies the "integrated approach" which aims to prevent and reduce pollution to all the environmental aspects such as air, soil, water, resources/energy use, and waste generation from the major industrial activities in the EU.

H. Environmental Impact Assessment

The Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹, as amended, known as the "EIA" (environmental impact assessment) Directive, requires that an environmental assessment to be carried out by the competent national authority for certain projects which are likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location, before development consent is given. The projects may be proposed by a public or private person.

An assessment is obligatory for projects listed in Annex I of the Directive, which are considered as having significant effects on the environment.

Other projects, listed in Annex II of the Directive, are not automatically assessed: Member States can decide to subject them to an environmental impact assessment on a case-by-case basis or according to thresholds or criteria (for example size), location (sensitive ecological areas in particular) and potential impact (surface affected, duration). The process of determining whether an environmental impact assessment is required for a project listed in Annex II is called screening.

The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2005:

- Directive 97/11/EC brought the Directive in line with the Espoo Convention on EIA in a Transboundary Context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and established minimum information requirements.
- Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.
- Directive 2009/31/EC amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO₂).

The environmental impact assessment must identify the direct and indirect effects of a project on the following factors: human beings, the fauna, the flora, the soil, water, air, the climate, the landscape, the material assets and cultural heritage, as well as the interaction between these various elements.

The developer (the person who applied for development consent or the public authority which initiated the project) must provide the authority responsible for approving the project with the following information as a minimum: a description of the project (location, design and size); possible measures to reduce significant adverse effects; data required to assess the main effects of the project on the environment; the main alternatives considered by the developer and the main reasons for this choice; a non-technical summary of this information.

In June 2003, the EC Commission published a detailed report on the state of implementation of the directive (as amended) in the Member States. It documented a range of practical problems with implementation of the directive on the ground at local level. These problems included: variation in the levels at which thresholds were set for the Annex II projects; lack of

monitoring of EIA activity, together with an absence of data on EIA activity; the variety of approaches adopted to ‘scoping’; lack of formal review procedures to confirm that the information provided by the developer in the Environmental Impact Statement (EIS) actually complies with the specific requirements set down in the directive; inadequate attention to the consideration of “alternatives” in a number of Member States; ongoing difficulties with “salami-slicing” of projects; wide variations in the level of public involvement in the EIA procedure; lack of clarity in the relationship between EIA and other control systems such as Integrated Pollution Prevention and Control (IPPC) and the Habitats directive at national level.

EIA remains one of the most problematic areas of EU law in terms of implementation and enforcement at local level. The EIA directive is a framework directive. It leaves considerable discretion to the Member States as regards the manner of implementation within the national legal system. This approach conforms with the principle of subsidiarity. It also aims to take account of the (sharp) differences in legal and administrative cultures throughout the Member States. However, this flexible approach leads (almost inevitably) to problems with implementation and enforcement. In many instances, it is difficult to pinpoint the scope of the obligations created in the directive. The outer limits of a Member State’s discretion are sometimes uncertain. It is vital, therefore, to improve the understanding of judges on the essence of this directive.

2. Instruments and Case Law

A. Basic Documents

(1) Air pollution

- Directive 2008/50/EC on ambient air quality and cleaner air for Europe
- 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
- Directive 2001/81/EC of the European Parliament and the Council on National Emission Ceilings for certain pollutants (NEC Directive)
- Council Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control
- Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from Large Combustion Plants

- Council Directive 94/66/EC amending Directive 88/609/EEC on the limitation of emissions of certain pollutants into the air from large combustion plants
- Directive 2000/76/EC of the European Parliament and of the Council of 4th December 2000 on the incineration of waste.
- Council Decision of 27 January 1997 establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the Member States (97/101/EC)
- Commission Decision of 29 April 2004 laying down a questionnaire to be used for annual reporting on ambient air quality assessment under Council Directives 96/62/EC and 1999/30/EC and under Directives 2000/69/EC and 2002/3/EC of the European Parliament and of the Council [notified under document number C(2004) 1714] (Text with EEA relevance) (2004/461/EC)
- Commission Decision 2004/224/EC laying down the obligation of Member States to submit within two years so-called Plans and Programmes for those air quality zones where certain assessment thresholds set in the Directives are exceeded.
- Council Directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates, as last amended by Directive 89/427/EEC
- Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide, as last amended by Council Directive 85/580/EEC
- Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC.
- Commission Directive 2000/71/EC of 7 November 2000 to adapt the measuring methods as laid down in Annexes I, II, III and IV of Directive 98/70/EC of the European Parliament and of the Council to technical progress as foreseen in Article 10 of that Directive.
- Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels (Text with EEA relevance)
- Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer

(2) Noise pollution

- Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise
- Directive 86/188/EEC on the protection of workers from the risks related to exposure to noise at work

(3) Water protection and management

- Directive 91/271/EEC of 21 May 1991 on Urban Waste Water Treatment
- Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources
- Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive, WFD)
- Directive 2006/118/EC of 12 December 2006 on the protection of groundwater against pollution and deterioration
- Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC

(4) Protection of the Marine Environment

- Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)
- Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council
- Directive 95/ 21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member State, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)
- Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements
- The Convention on the Protection of the Marine Environment in the Baltic Sea Area of 1992 (further to the earlier version of 1974) – the Helsinki Convention (HELCOM)
- The Convention for the Protection of the Marine Environment in the North-East Atlantic of 1992 (further to earlier versions of 1972 and 1974) – the OSPAR Convention (OSPAR)
- The Convention for the Protection of Marine Environment and the Coastal Region of the Mediterranean of 1995 (further to the earlier version of 1976) – the Barcelona Convention (UNEP-MAP)

- The Convention for the Protection of the Black Sea of 1992 – the Bucharest Convention.

(5) Waste Management

- Directive 2008/98/EC of 19 November 2008 on waste (Waste Framework Directive)
- Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste
- Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste
- Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste
- Directive 2000/76/EC of 4 December 2000 on the incineration of waste
- Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils
- Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry
- Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry
- 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
- Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture
- Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances
- European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste
- Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)
- Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles

- Commission Decision 2002/204/EC of 30 October 2001 on the waste disposal system for car wrecks implemented by the Netherlands
- Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment
- Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)
- Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)
- 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal , 1673 UNTS 57/ [1992] ATS 7/ 28 ILM 657 (1989)
- Amendment to the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Geneva, 22 September 1995 (UNEP/CHW.3/35)
- Rotterdam Convention on the Prior Informed Consent Procedure in Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, 10 September 1998, United Nations, Treaty Series , vol. 2244, p. 337.
- Basel Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movement of Hazardous Wastes and their Disposal, Basel, 10 December 1999 (UNEP/CHW.1/WG/1/9/2).
- Stockholm Convention on Persistent Organic Pollutants, Stockholm, 22 May 2001, United Nations, Treaty Series, vol. 2256, p.119.

(6) Nature Conservation and Species Protection

- Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds (The Birds Directive)
- Council Directive 92/ 43/ EEC of May 1992 on the conservation of natural habitats and of wild fauna and flora (The Habitats Directive)

(7) Industrial Emissions

- Directive 2010/75/EU of the European Parliament and the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Directive 2008/1/EC of the European Parliament and the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) Directive 2001/80/EC

of the European Parliament and the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants

- Directive 2000/76/EC of the European Parliament and the Council of 4 December 2000 on the incineration of waste
- 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
- 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
- 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)
- Council Directive of 20 February 1978 on waste from the titanium dioxide industry (78/176/EEC)

(8) Environmental Impact Assessment

- Directive 85/337/EEC Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive)
- Directive 2001/42/EC of the European Parliament and the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)
- Directive 2003/35/EC of the European Parliament and 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 Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

B. Case Law

(1) Air pollution

- [Case C- 237/07](#), Judgment of the Court (Second Chamber) of 25 July 2008. Dieter Janecek v Freistaat Bayern. Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany
- [Joined Cases C- 165/09 to C- 167/ 09](#), Judgment of the Court (First Chamber) of 26 May 2011. Stichting Natuur en Milieu and Others v College van Gedeputeerde Staten van Groningen (C-165/09) and College van Gedeputeerde Staten van Zuid-Holland (C-166/09 and C-167/09). References for a preliminary ruling: Raad van State - Netherlands.
- [Case C-251/07](#), Judgment of the Court (Fourth Chamber) of 11 September 2008. Gävle Kraftvärme AB v Länsstyrelsen i Gävleborgs län. Reference for a preliminary ruling: Högsta domstolen - Sweden
- [Case C-317/07](#), Judgment of the Court (Second Chamber) of 4 December 2008. Lahti Energia Oy. Reference for a preliminary ruling: Korkein hallinto-oikeus - Finland
- [Case C-343/09](#), Judgment of the Court (Fourth Chamber) of 8 July 2010. Afton Chemical Limited v Secretary of State for Transport. Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) - United Kingdom
- [Case C-341/95](#), Judgment of the Court of 14 July 1998. Gianni Bettati v Safety Hi-Tech Srl. Reference for a preliminary ruling: Pretura circondariale di Avezzano – Italy

(2) Noise pollution

- [Case C-389/96](#), Judgment of the Court (Fifth Chamber) of 14 July 1998. Aher-Waggon GmbH v Bundesrepublik Deutschland. Reference for a preliminary ruling: Bundesverwaltungsgericht – Germany
- [Case C-120/10](#), Judgment of the Court (First Chamber) of 8 September 2011. European Air Transport SA v Collège d'Environnement de la Région de Bruxelles-Capitale and Région de Bruxelles-Capitale. Reference for a preliminary ruling: Conseil d'État – Belgium
- [Case C-422/05](#), Judgment of the Court (Third Chamber) of 14 June 2007. Commission of the European Communities v Kingdom of Belgium

(3) Water Protection and Management

- [Case C-32/05](#), Judgment of the Court (Third Chamber) of 30 November 2006. Commission of the European Communities v Grand Duchy of Luxemburg

- [Case C-36/98](#), Judgment of the Court of 30 January 2001. Kingdom of Spain v Council of the European Union
- [Case C-232/97](#), Judgment of the Court (Sixth Chamber) of 29 September 1999. L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland. Reference for a preliminary ruling: Raad van State - Netherlands.
- [Case C-207/97](#), Judgment of the Court (Sixth Chamber) of 21 January 1999. Commission of the European Communities v Kingdom of Belgium
- [Case C-184/97](#), Judgment of the Court (Sixth Chamber) of 11 November 1999. Commission of the European Communities v Federal Republic of Germany. C 214/ 96 Judgment of the Court (Sixth Chamber) of 25 November 1998. Commission of the European Communities v Kingdom of Spain.
- [Case C-384/97](#), Judgment of the Court (Sixth Chamber) of 25 May 2000. Commission of the European Communities v Hellenic Republic
- [Case C-261/98](#), Judgment of the Court (Second Chamber) of 13 July 2000. Commission of the European Communities v Portuguese Republic
- [Case C-282/02](#), Judgment of the Court (Second Chamber) of 2 June 2005. Commission of the European Communities v Ireland
- [Case C- 381/07](#), Judgment of the Court (Second Chamber) of 6 November 2008, Association nationale pour la protection des eaux et rivières - TOS v Ministère de l'Écologie, du Développement et de l'Aménagement durables. Reference for a preliminary ruling: Conseil d'État – France
- [Case C- 307/98](#), Judgment of the Court (Fifth Chamber) of 25 May 2000. Commission of the European Communities v Kingdom of Belgium
- [Case C-92/96](#), Judgment of the Court (Fifth Chamber) of 12 February 1998. Commission of the European Communities v Kingdom of Spain
- [Case C-56/90](#), Judgment of the Court of 14 July 1993. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland
- [Case C-322/86](#), Judgment of the Court of 12 July 1988. Commission of the European Communities v Italian Republic

(4) Protection of the Marine Environment

- [Case C-440/05](#), Judgment of the Court (Grand Chamber) of 23 October 2007. Commission of the European Communities v Council of the European Union.

- [Case C-239/03](#), Judgment of the Court (Second Chamber) of 7 October 2004. Commission of the European Communities v French Republic

(5) Waste Management

- [Case C-252/05](#), Judgment of the Court (Second Chamber) of 10 May 2007. The Queen on the application of: Thames Water Utilities Ltd v South East London Division, Bromley Magistrates' Court
- [Joined Cases C-372/85 to 374/85](#), Judgment of the Court (Fourth Chamber) of 12 May 1987. Ministère public v Oscar Traen and others. References for a preliminary ruling: Rechtbank van eerste aanleg Brugge - Belgium
- [Case C-114/01](#), Judgment, of the Court (Sixth Chamber) of 11 September 2003. AvestaPolarit Chrome Oy. Reference for a preliminary ruling: Korkein hallinto-oikeus - Finland
- [Case C-1/03](#), Judgment of the Court (Second Chamber) of 7 September 2004. Van de Walle and Others
- [Joined Cases C-206/88 and C- 207/88](#), Judgment of the Court (First Chamber) of 28 March 1990, Criminal proceedings against G. Vessoso and G. Zanetti. References for a preliminary ruling: Prétura di Asti - Italy
- [Case C- 129/96](#), Judgment of the Court of 18 December 1997. Inter-Environnement Wallonie v Région wallonne. Reference for a preliminary ruling: Conseil d'Etat - Belgium
- [Case C-194/01](#), Judgment of the Court (Fifth Chamber) of 29 April 2004. Commission v. Austria
- [Case C-235/02](#), Order of the Court (Third Chamber) of 15 January 2004. Criminal proceedings against Marco Antonio Saetti and Andrea Frediani. Reference for a preliminary ruling: Tribunale di Gela - Italy
- [Case C-9/00](#), Judgment of the Court (Sixth Chamber) of 18 April 2002. Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus - Reference for a preliminary ruling: Korkein hallinto-oikeus - Finland
- [Case C-457/02](#), Judgment of the Court (Second Chamber) of 11 November 2004. Criminal proceedings against Antonio Niselli. Reference for a preliminary ruling: Tribunale di Terni – Italy.

- [Case C-444/00](#), Judgment of the Court (Fifth Chamber) of 19 June 2003. The Queen, on the application of Mayer Parry Recycling Ltd, v Environment Agency and Secretary of State for the Environment, Transport and the Regions, and Corus (UK) Ltd and Allied Steel and Wire Ltd (ASW)
- [Case C-380/87](#), Judgment of the Court (Fifth Chamber) of 13 July 1989. Enichem Base and others v Comune di Cinisello Balsamo. Reference for a preliminary ruling: Tribunale amministrativo regionale della Lombardia – Italy.
- [Case C-6/00](#), Judgment of the Court (Fifth Chamber) of 27 February 2002. ASA-Abfall Service AG (ASA) v Bundesminister für Umwelt, Jugend und Familie. Reference for a preliminary ruling: Verwaltungsgerichtshof - Austria.
- [Case C-228/00](#), Judgment of the Court (Fifth Chamber) of 13 February 2003. Commission v Germany
- [Joined C-175/98 and C- 177/ 98](#), Judgment of the Court (Fourth Chamber) of 5 October 1999. Criminal proceedings against Paolo Lirussi (C-175/98) and Francesca Bizzaro (C-177/98). Reference for a preliminary ruling: Pretore di Udine - Italy.
- [Case C-236/92](#), Judgment of the Court of 23 February 1994. Comitato di Coordinamento per la Difesa della Cava and others v Regione Lombardia and others. Reference for a preliminary ruling: Tribunale amministrativo regionale per la Lombardia - Italy.
- [Joined Cases C-53/02 and C-217/02](#), Judgment of the Court (Sixth Chamber) of 1 April 2004. Commune de Braine-le-Château (C-53/02) and Michel Tillieut and Others (C-217/02) v Région wallonne, and BIFFA Waste Services SA and Others. Reference for a preliminary ruling: Conseil d'État - Belgium.
- [Case C-494/01](#), Judgment of the Court (Grand Chamber) of 26 April 2005. Commission of the European Communities v Ireland.
- [Case C-297/08](#), Judgment of the Court (Fourth Chamber) of 4 March 2010. Commission of the European Communities v Ireland.
- [Case C-203/96](#), Judgment of the Court (Sixth Chamber) of 25 June 1998. Chemische Afvalstoffen Dusseldorp BV and Others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer. Reference for a preliminary ruling: Raad van State - Netherlands.
- [Case C-188/07](#), Judgment of the Court (Grand Chamber) of 24 June 2008. Commune de Mesquer v Total France SA and Total International Ltd. Reference for a preliminary ruling: Cour de cassation - France.

- [Case C-254/08](#), Judgment of the Court (Second Chamber) of 16 July 2009. Futura Immobiliare srl Hotel Futura and Others v Comune di Casoria. Reference for a preliminary ruling: Tribunale amministrativo regionale della Campania – Italy.
- [Case C-318/98](#), Judgment of the Court (Sixth Chamber) of 22 June 2000. Criminal proceedings against Giancarlo Fornasar, Andrea Strizzolo, Giancarlo Toso, Lucio Mucchino, Enzo Peressutti and Sante Chiarcosso. Reference for a preliminary ruling: Pretura circondariale di Udine - Italy.
- [Case C-424/02](#), Judgment of the Court (First Chamber) of 15 July 2004. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.
- [Case C-92/03](#), Judgment of the Court (Second Chamber) of 27 January 2005. Commission of the European Communities v Portuguese Republic.
- [Case C-463/01](#), Judgment of the Court (Grand Chamber) of 14 December 2004. Commission of the European Communities v Federal Republic of Germany.
- [Case C-309/02](#), Judgment of the Court (Grand Chamber) of 14 December 2004. Radlberger Getränkegesellschaft mbH & Co. and S. Spitz KG v Land Baden-Württemberg. Reference for a preliminary ruling: Verwaltungsgericht Stuttgart - Germany.
- [Case C-259/05](#), Judgment of the Court (First Chamber) of 21 June 2007. Criminal proceedings against Omni Metal Service. Reference for a preliminary ruling: Rechtbank te Rotterdam - Netherlands.
- [Case C-192/96](#), Judgment of the Court (Sixth Chamber) of 25 June 1998. Beside BV and I.M. Besselsen v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer. Reference for a preliminary ruling: Raad van State - Netherlands.
- [Case C-215/04](#), Judgment of the Court (First Chamber) of 16 February 2006. Marius Pedersen A/S v Miljøstyrelsen. Reference for a preliminary ruling: Østre Landsret - Denmark.
- [Case C-472/02](#), Judgment of the Court (Fifth Chamber) of 19 October 2004. Siomab SA v Institut bruxellois pour la gestion de l'environnement. Reference for a preliminary ruling: Cour d'appel de Bruxelles - Belgium.
- [Case C-209/98](#), Judgment of the Court of 23 May 2000. Entreprenørforeningens Affalds/Miljøsektion (FFAD) v Københavns Kommune. Reference for a preliminary ruling: Østre Landsret - Denmark.

- [Case C-324/99](#), Judgment of the Court of 13 December 2001. DaimlerChrysler AG v Land Baden-Württemberg. Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany.
- [Case C-113/02](#), Judgment of the Court (First Chamber) of 14 October 2004. Commission of the European Communities v Kingdom of the Netherlands.
- [Case C-389/00](#), Judgment of the Court (Fifth Chamber) of 27 February 2003. Commission of the European Communities v Federal Republic of Germany.
- [Case C-172/08](#), Judgment of the Court (Second Chamber) of 25 February 2010. Pontina Ambiente Srl v Regione Lazio. Reference for a preliminary ruling: Commissione tributaria provinciale di Roma - Italy.
- [Case C-6/03](#), Judgment of the Court (First Chamber) of 14 April 2005. Deponiezweckverband Eiterköpfe v Land Rheinland-Pfalz. Reference for a preliminary ruling: Verwaltungsgericht Koblenz - Germany.

(6) Nature Conservation and Species Protection

- [Case C-247/85](#), Judgment of the Court of 8 July 1987. - Commission of the European Communities v Kingdom of Belgium
- [Case C-252/85](#), Judgment of the Court of 27 April 1988. Commission of the European Communities v French Republic
- [Case C-262/85](#), Judgment of the Court of 8 July 1987. Commission of the European Communities v Italian Republic
- [Case C-412/85](#), Judgment of the Court of 17 September 1987. Commission of the European Communities v Federal Republic of Germany. Failure to comply with a directive - Conservation of wild birds
- [Case C-57/89](#), Judgment of the Court of 28 February 1991. Commission of the European Communities v Federal Republic of Germany
- [Case C-157/89](#), Judgment of the Court of 17 January 1991. Commission of the European Communities v Italian Republic.
- [Case C-355/90](#), Judgment of the Court of 2 August 1993. Commission of the European Communities v Kingdom of Spain.
- [Case C-435/92](#), Judgment of the Court of 19 January 1994. Association pour la Protection des Animaux Sauvages and others v Préfet de Maine-et-Loire and Préfet de Loire-Atlantique. - Reference for a preliminary ruling: Tribunal administratif de Nantes.

- [Case C-44/95](#), Judgment of the Court of 11 July 1996. Regina v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds. Reference for a preliminary ruling: House of Lords - United Kingdom
- [Case C-118/94](#), Judgment of the Court (Fifth Chamber) of 7 March 1996. Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente - Comitato Regionale, Lega Anti Vivisezione - Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra - Sezione di Venezia v Regione Veneto. Reference for a preliminary ruling: Tribunale amministrativo regionale per il Veneto - Italy.
- [Case C-3/96](#), Judgment of the Court of 19 May 1998. - Commission of the European Communities v Kingdom of the Netherlands.
- [Case C-10/96](#), Judgment of the Court (Third Chamber) of 12 December 1996. Ligue royale belge pour la protection des oiseaux ASBL and Société d'études ornithologiques AVES ASBL v Région Wallonne, interveners: Fédération royale ornithologique belge ASBL Reference for a preliminary ruling: Conseil d'Etat - Belgium.
- [Case C-166/97](#), Judgment of the Court (Fifth Chamber) of 18 March 1999. - Commission of the European Communities v French Republic.
- [Case C-96/98](#), Judgment of the Court (Fifth Chamber) of 25 November 1999. - Commission of the European Communities v French Republic. - Failure by a Member State to fulfil its obligations - Directive 79/409/EEC - Conservation of wild birds – Special protection areas.
- [Case C-371/98](#), Judgment of the Court of 7 November 2000. The Queen v Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd, interveners: World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust. Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court) - United Kingdom
- [Case C-374/98](#), Judgment of the Court (Sixth Chamber) of 7 December 2000. Commission of the European Communities v French Republic.
- [Case C-38/99](#), Judgment of the Court (Sixth Chamber) of 7 December 2000. Commission of the European Communities v French Republic
- [Case C-103/00](#), Judgment of the Court (Sixth Chamber) of 30 January 2002. - Commission of the European Communities v Hellenic Republic

- [Case C-117/00](#), Judgment of the Court (Sixth Chamber) of 13 June 2002. - Commission of the European Communities v Ireland.
- [Case C-127/02](#), Judgment of the Court (Grand Chamber) of 7 September 2004. - Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. – Reference for a preliminary ruling: Raad van State - Netherlands.
- [Case C-182/02](#), Judgment of the Court (Sixth Chamber) of 16 October 2003. - Ligue pour la protection des oiseaux and Others v Premier ministre and Ministre de l'Aménagement du territoire et de l'Environnement. Reference for a preliminary ruling: Conseil d'Etat – France.
- [Case C-209/02](#), Judgment of the Court (Second Chamber) of 29 January 2004. Commission of the European Communities v Republic of Austria.
- [Case C-117/03](#), Judgement of the Court (Second Chamber) of 13 January 2005, Reference for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by order of 17 December 2002, received at the Court on 18 March 2003, in the proceedings Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti, Regione Autonoma del Friuli Venezia Giulia

(7) Industrial Emissions

- [Case T-374/04](#), Judgment of the Court of First Instance (Third Chamber, extended composition) of 7 November 2007. Federal Republic of Germany v Commission of the European Communities
- [Joined Cases C-165/09 to C-167/09](#), Judgment of the Court (First Chamber) of 26 May 2011 (references for a preliminary ruling from the Raad van State (Netherlands)) — Stichting Natuur en Milieu and Others (C-165/09) v College van Gedeputeerde Staten van Groningen, Stichting Natuur en Milieu and Others (C-166/09) v College van Gedeputeerde Staten van Zuid-Holland, Stichting Natuur en Milieu and Others (C-167/09) v College van Gedeputeerde Staten van Zuid-Holland

(8) Environmental Impact Assessment

- [Case C-295/10](#), Judgment of the Court (Fourth Chamber) of 22 September 2011; Genovaitė Valčiukienė and Others v Pakruojo rajono savivaldybė and Others. Reference for a preliminary ruling: Vyriausiasis administracinis teismas - Lithuania.

- [Case C-290/03](#), Judgment of the Court (First Chamber) of 4 May 2006; The Queen, on the application of: Diane Barker v London Borough of Bromley. Reference for a preliminary ruling: House of Lords - United Kingdom.
- [Case C-2/07](#), Judgment of the Court (Second Chamber) of 28 February 2008; Paul Abraham and Others v Région wallonne and Others Reference for a preliminary ruling: Cour de cassation - Belgium.
- [Case C-142/07](#), Judgment of the Court (Third Chamber) of 25 July 2008; Ecologistas en Acción-CODA v Ayuntamiento de Madrid. Reference for a preliminary ruling: Juzgado de lo Contencioso-Administrativo nº 22 de Madrid - Spain.
- [Case C-275/09](#), Judgment of the Court (First Chamber) of 17 March 2011; Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest. Reference for a preliminary ruling: Raad van State - Belgium.
- [Case C-435/97](#), Judgment of the Court (Sixth Chamber) of 16 September 1999; World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others. Reference for a preliminary ruling: Verwaltungsgericht, Autonome Sektion für die Provinz Bozen - Italy.
- [Case C-201/02](#), Judgment of the Court (Fifth Chamber) of 7 January 2004; The Queen, on the application of Delena Wells v Secretary of State for Transport, Local Government and the Regions. Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) - United Kingdom.
- [Case C-81/96](#), Judgment of the Court (Sixth Chamber) of 18 June 1998; Burgemeester en wethouders van Haarlemmerliede en Spaarnwoude and Others v Gedeputeerde Staten van Noord-Holland. Reference for a preliminary ruling: Raad van State - Netherlands.
- [Case C-396/92](#), Judgment of the Court of 9 August 1994, Bund Naturschutz in Bayern e.V. and Richard Stahnsdorf and others v Freistaat Bayern, Stadt Vilsbiburg and Landkreis Landshut. Reference for a preliminary ruling: Bayerischer Verwaltungsgerichtshof - Germany.
- [Case C-75/08](#), Judgment of the Court (Second Chamber) of 30 April 2009; The Queen, on the application of Christopher Mellor v Secretary of State for Communities and Local Government. Reference for a preliminary ruling: Court of Appeal (England & Wales) (Civil Division) - United Kingdom.

- [Case C-255/08](#), Judgment of the Court (Sixth Chamber) of 15 October 2009; Commission of the European Communities v Kingdom of the Netherlands.
- [Case C-66/06](#), Judgment of the Court (Second Chamber) of 20 November 2008; Commission of the European Communities v Ireland.
- [Case C-133/94](#), Judgment of the Court (Sixth Chamber) of 2 May 1996; Commission of the European Communities v Kingdom of Belgium.
- [Case C-72/95](#), Judgment of the Court of 24 October 1996; Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland. Reference for a preliminary ruling: Raad van State - Netherlands.
- [Case C-392/96](#), Judgment of the Court (Fifth Chamber) of 21 September 1999. Commission of the European Communities v Ireland.
- [Case C-205/08](#), Judgment of the Court (Second Chamber) of 10 December 2009. Umweltanwalt von Kärnten v Kärntner Landesregierung. Reference for a preliminary ruling: Umweltsenat - Austria.
- [Case C-227/01](#), Judgment of the Court (Second Chamber) of 16 September 2004. Commission of the European Communities v Kingdom of Spain.
- [Case C-332/04](#), Judgment of the Court (Third Chamber) of 16 March 2006. Commission of the European Communities v Kingdom of Spain.
- [Case C-508/03](#), Judgment of the Court (First Chamber) of 4 May 2006. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland.
- [Case C-230/00](#), Judgment of the Court (Third Chamber) of 14 June 2001. Commission of the European Communities v Kingdom of Belgium.
- [Case C-159/06](#), Judgment of the Court (Sixth Chamber) of 26 October 2006. Commission of the European Communities v Republic of Finland.
- [Joined Cases C-105/09 and C- 110/ 09](#), Judgment of the Court (Fourth Chamber) of 17 June 2010. Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne. References for a preliminary ruling: Conseil d'État - Belgium.
- [Case C-190/90](#), Judgment of the Court of 20 May 1992; Commission of the European Communities v Kingdom of the Netherlands.

3. Trainers

The trainers' profiles recommended for this topic are those of national and international experts, preferably from the European Court of Justice, national courts and academics or scholars.

4. Trainees

This topic can be especially recommended to junior judges, future/trainee judges and senior judges.

5. Methodology

A. Training Method

Training can be carried out in the form of a basic seminar but it might be not necessary to dedicate a whole seminar to one of the topics of Substantial Environmental Law. Following topics could be successfully combined within one 2,5 days seminar:

- Air Pollution & Noise Pollution;
- Water Management & Protection of Marine Environment.

For following topics it would be valuable to dedicate the whole 2,5 days seminar:

- Waste Management
- Nature Conservation and Species Protection
- Industrial Emissions
- Environmental Impact Assessment

B. Complementary e-learning

The basic seminar can be accompanied by complementary e-learning tools.

C. Priority

It is important that judges are acquainted with the substantial European environmental law and this training should therefore be a top priority.

D. Format

Training can be carried out in a local, regional or national setting or on a trans-national or EU-wide basis.

III. ENFORCEMENT AND PROCEDURAL RIGHTS

1. Introduction

A. Environmental Liability

“Traditional” environmental legislation attempts to protect the environment through regulating the behaviour of actors. Violations of these rules are usually punishable through administrative or criminal sanctions. An environmental liability regime provides an important addition to this legislation by providing the means to help recover the costs of damages that occur either in violation of existing environmental standards or as a result of (partly) unregulated behaviour. Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (ELD) establishes a framework based on the polluter pays principle, according to which the polluter pays when environmental damage occurs. This principle is already set out in Article 191(2) TFEU. As the ELD deals with the "pure ecological damage", it is based on the powers and duties of public authorities ("administrative approach") as distinct from a civil liability system which is more appropriate for "traditional damage" (damage to property, economic loss, personal injury).

The Directive's main objective is to prevent and remedy "environmental damage". Environmental damage is defined as damage to protected species and habitats (nature), damage to water and damage to soil. The liable party is in principle the "operator", i.e. the one (natural or legal person) who carries out an occupational activity. The operator, who carries out certain dangerous activities as listed in the Directive is strictly liable (without fault) for the environmental damage he caused. He might though benefit from certain exceptions and defences allowed by the ELD (for example force majeure, armed conflict, third party intervention) or by transposing legislation of the Member States (for example permit defence,

state of the art defence). All operators carrying out occupational activities are liable for fault-based damage they cause to nature as defined by the ELD.

Operators have to take the necessary preventive action in case of immediate threat of environmental damage. They are equally under the obligation to remedy the environmental damage once it has occurred ("polluter pays"). In specific cases where the operators fail to do so or are not identifiable, the competent authority may step in and carry out the necessary preventive or remedial measures. Remediation has to consist basically in the restoration of the damaged natural resources (nature, water, soil) either in kind towards "baseline condition" or by recreation of similar resources if return to baseline condition is not possible any more.

The ELD leaves significant discretion to the Member States which may not only decide on the use of optional defences but also on other optional choices (scope regarding damage to nature, as regards the "operator"-definition, the type of multi-party causation, the forms and measures regarding financial security etc.), and may moreover take or maintain stricter measures than prescribed by the Directive (Article 193 TFEU, Article 16(1) ELD). This characterises the ELD as framework directive.

Civil society plays an important part when it comes to necessary preventive and remedial action: Affected natural or legal persons including environmental NGOs have the right to request the competent authority for action if they deem it necessary. If the entitled persons consider that the competent authority, which has to inform them about the decision to accede or to refuse the request for action, has failed to take the appropriate decision, they even have the right to appeal before a court or other independent public body to review the decision.

The ELD was already amended twice through Directive 2006/21/EC on the management of waste from extractive industries and through Directive 2009/31/EC on the geological storage of carbon dioxide and amending several directives. Directive 2006/21/EC broadened the scope of strict liability by adding one more dangerous activity ("management of extractive waste") to the list of dangerous occupational activities in Annex III of the ELD. Directive 2009/31/EC adds another dangerous activity ("operation of storage sites pursuant to Directive 2009/31/EC") but includes also genuine responsibility and financial security provisions separate from the ELD.

B. Procedural Rights

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 was adopted on 25 June 1998 in the Danish city of Aarhus (Århus). It entered into force on 30 October 2001.

The Aarhus Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. The Convention provides for:

- the right of everyone to receive environmental information that is held by public authorities ("access to environmental information")
- the right to participate in environmental decision-making
- the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").

The Decision on conclusion of the Aarhus Convention by the EC was adopted on 17 February 2005 (Decision 2005/370/EC). The EC is a Party to the Convention since May 2005.

In 2003 two Directives concerning the first and second "pillars" of the Aarhus Convention were adopted:

- 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/EEC
- 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

Both Directives 2003/4 and 2003/35 contain provisions on access to justice.

Regulation (EC) N° 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (The Aarhus Regulation) entered into force on 28 September 2006 and became of application on 17 July 2007.

The "Aarhus Regulation" covers not only the institutions, but also bodies, offices or agencies established by, or on the basis of the EU Treaty. They now need to adapt their internal procedures and practice to the provisions of the Regulation. The Aarhus Regulation addresses the "three pillars" of the Aarhus Convention - access to information, public participation and access to justice in environmental matters - where those are of relevance to EU institutions

and bodies and lays down related requirements. Regarding access to environmental information, the Aarhus Regulation extends Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents to all EU institutions and bodies. The Aarhus Regulation furthermore requires those institutions and bodies to provide for public participation in the preparation, modification or review of "plans and programmes relating to the environment". The Aarhus Regulation also enables environmental NGOs meeting certain criteria to request an internal review under environmental law of acts adopted, or omissions, by EU institutions and bodies.

2. Instruments and Case Law

A. Basic documents

(1) Environmental Liability

- Directive 2004/35/CE of the European Parliament and the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage
- Directive 2006/21/EC of the European Parliament and the of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC
- Directive 2009/31/EC of the European Parliament and the of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006

(2) Procedural Rights

- 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/EEC
- 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

- Regulation 1367/ 2006 of the European Parliament and the of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (Aarhus Regulation)
- Regulation (EC) No 1049/2001 of the European Parliament and the of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (was declared applicable by the Aarhus Regulation)
- Regulation (EC) No 166/2006 of the European Parliament and of the Council 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
- Convention on the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998 (entered into force on 30 October 2001)

B. Case Law

(1) Environmental Liability

- [Case C-378/08](#), Judgment of the Court (Grand Chamber) of 9 March 2010. Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA and Syndial SpA v Ministero dello Sviluppo economico and Others. Reference for a preliminary ruling: Tribunale amministrativo regionale della Sicilia - Italy. Polluter pays' principle - Directive 2004/35/EC - Environmental liability - Applicability *ratione temporis* - Pollution occurring before the date laid down for implementation of that directive and continuing after that date - National legislation imposing liability on a number of undertakings for the costs of remedying the damage connected with such pollution - Requirement for fault or negligence - Requirement for a causal link - Public works contracts.
- [Joined Cases C-379/08 and C-380/08](#), Judgment of the Court (Grand Chamber) of 9 March 2010. Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA and Syndial SpA v Ministero dello Sviluppo economico and Others (C-379/08) and ENI SpA v Ministero Ambiente e Tutela del Territorio e del Mare and Others (C-380/08). References for a preliminary ruling: Tribunale amministrativo regionale della Sicilia - Italy. Polluter pays' principle - Directive 2004/35/EC - Environmental liability - Applicability *ratione temporis* - Pollution occurring before the date laid down for

implementation of that directive and continuing after that date - Remedial measures - Duty to consult the undertakings concerned - Annexe II.

- [Joined Cases C-478/08 and C-479/08](#), Order of the Court (Eighth Chamber) of 9 March 2010. Buzzi Unicem SpA and Others v Ministero dello Sviluppo economico and Others (C-478/08) and Dow Italia Divisione Commerciale Srl v Ministero Ambiente e Tutela del Territorio e del Mare and Others (C-479/08). References for a preliminary ruling: Tribunale amministrativo regionale della Sicilia - Italy. First subparagraph of Article 104(3) of the Rules of Procedure - 'Polluter pays' principle - Directive 2004/35/EC - Environmental liability - Applicability *ratione temporis* - Pollution occurring before the date laid down for implementation of that directive and continuing after that date - National legislation imposing liability on a number of undertakings for the costs of remedying the damage connected with such pollution - Requirement for fault or negligence - Requirement for a causal link - Remedial measures - Duty to consult the undertakings concerned - Annex II to the directive .
- [Case C-188/07](#), Judgment of the Court (Grand Chamber) of 24 June 2008. Commune de Mesquer v Total France SA and Total International Ltd. Reference for a preliminary ruling: Cour de cassation - France. Directive 75/442/EEC - Waste management - Concept of waste - 'Polluter pays' principle - Holder - Previous holders - Producer of the product from which the waste came - Hydrocarbons and heavy fuel oil - Shipwreck - International Convention on Civil Liability for Oil Pollution Damage - International Oil Pollution Compensation Fund.
- [Case C-343/95](#), Judgment of the Court of 18 March 1997. Diego Calì & Figli Srl v Servizi ecologici porto di Genova SpA (SEPG). Reference for a preliminary ruling: Tribunale di Genova - Italy.
- Harbour company - Prevention of pollution - Legal monopoly - Abuse of a dominant position.
- [Case C-232/97](#), Judgment of the Court (Sixth Chamber) of 29 September 1999. L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland. Reference for a preliminary ruling: Raad van State - Netherlands. Environment - Directives 76/464/EEC, 76/769/EEC and 86/280/EEC - "Discharge" - Possibility for a Member State to adopt more stringent measures than those provided for in Directive 76/464/EEC - Effect of Directive 76/769/EEC on such a measure.
- [Joined Cases T-236/04 and T-241/04](#), Order of the Court of First Instance (Second Chamber) of 28 November 2005. European Environmental Bureau (EEB) and

Stichting Natuur en Milieu v Commission of the European Communities. Action for annulment - Decisions 2004/247/EC and 2004/248/EC - Objection of inadmissibility - Standing to bring proceedings

(2) Procedural Rights

- [Case C-266/09](#), Judgment of the Court (Fourth Chamber) of 16 December 2010. Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden. Reference for a preliminary ruling: College van Beroep voor het bedrijfsleven - Netherlands. Environment - Plant protection products - Directive 91/414/EEC - Public access to information - Directives 90/313/EEC and 2003/4/EC - Temporal application - Concept of environmental information - Confidentiality of commercial and industrial information.
- [Case C-321/96](#), Judgment of the Court (Sixth Chamber) of 17 June 1998. Wilhelm Mecklenburg v Kreis Pinneberg - Der Landrat. Reference for a preliminary ruling: Schleswig-Holsteinisches Oberverwaltungsgericht - Germany. Environment - Access to information - Directive 90/313/EEC - Administrative measure for the protection of the environment - Preliminary investigation proceedings.
- [Case C-524/09](#), Judgment of the Court (Fourth Chamber) of 22 December 2010. Ville de Lyon v Caisse des dépôts et consignations. Reference for a preliminary ruling: Tribunal administratif de Paris - France. Preliminary rulings - Aarhus Convention - Directive 2003/4/EC - Public access to information in environmental matters - Directive 2003/87/EC - Scheme for greenhouse gas emission allowance trading - Regulation (EC) No 2216/2004 - Standardised, secured system of registries - Access to data on greenhouse gas emission allowance trading - Refusal to report - Central administrator - Administrators of national registries - Confidential nature of the data held in the registries - Exceptions.
- [Case C-217/97](#), Judgment of the Court (Sixth Chamber) of 9 September 1999. Commission of the European Communities v Federal Republic of Germany. Failure of a Member State to fulfil obligations - Directive 90/313/EEC - Freedom of access to information on the environment - Definition of 'public authorities' - Exclusion of the courts, criminal prosecution authorities and disciplinary authorities - Partial communication of information - Exclusion of the right to information during administrative proceedings - Amount of charges and mode of collecting them.

- [Case C-240/09](#), Judgment of the Court (Grand Chamber) of 8 March 2011. Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky. Reference for a preliminary ruling: Najvyšší súd Slovenskej republiky - Slovakia. Environment - Aarhus Convention - Public participation in the decision-making process and access to justice in environmental matters - Direct effect.
- [Case T-362/08](#), Judgment of the Court (Grand Chamber) of 26 January 2010. Internationaler Hilfsfonds eV v European Commission. Appeal - Access to documents of the institutions - Regulation (EC) No 1049/2001- Action for annulment - Notion of 'measure open to challenge' for the purposes of Article 230 EC.
- [Case C- 524/09](#), Judgment of the Court (Fourth Chamber) of 22 December 2010. Ville de Lyon v Caisse des dépôts et consignations. Reference for a preliminary ruling: Tribunal administratif de Paris - France. Preliminary rulings - Aarhus Convention - Directive 2003/4/EC - Public access to information in environmental matters - Directive 2003/87/EC - Scheme for greenhouse gas emission allowance trading - Regulation (EC) No 2216/2004 - Standardised, secured system of registries - Access to data on greenhouse gas emission allowance trading - Refusal to report - Central administrator - Administrators of national registries - Confidential nature of the data held in the registries - Exceptions.
- [Joined Cases T-120/10 and T-449/10](#), Order - 09/11/2011 – ClientEarth and Others v Commission, and [Case T-111/11](#) ClientEarth v Commission 7.3. Public Participation in Decision – making Member State Level
- [Case C-427/07](#), Judgment of the Court (Second Chamber) of 16 July 2009. Commission of the European Communities v Ireland. Failure of a Member State to fulfil obligations - Assessment of the effects of projects on the environment - Directive 85/337/EEC - Access to justice - Directive 2003/35/EC.

3. Trainers

EU experts, national practitioners and leading scholars are recommended.

4. Trainees

This topic can be especially recommended to junior judges, future/trainee judges and senior judges.

5. Methodology

A. Training Method

For the Environmental Liability a specialised seminar wherein the topic can be presented in depth, possibly in connection with General Principles of European environmental law, would be most suitable.

For Procedural Rights it would be valuable to dedicate the whole 2,5 days seminar.

B. Complementary e-learning

E-learning on the practical elements of both issues is recommended.

C. Priority

It is important that judges are acquainted with the enforcement of European environmental law and this training should therefore be a top priority.

D. Format

Training can be carried out in a local, regional or national setting or on a trans-national or EU-wide basis.

LIST OF REFERENCES

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Chapter I *General Principles of European Union Law*

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Declaration 17 (Declaration on Primacy) attached to the Treaties by the Treaty of Lisbon.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306/01, 13 December 2007

Protocol (No. 30) on the Application of the Principles of Subsidiarity and Proportionality, OJ C 310/207, 16 December 2004

Treaty of the European Union, Consolidated Version, OJ C 83/13, 30 March 2010

Treaty on the Functioning of the EU, Consolidated Version, OJ C 83/47, 30 March 2012

Chapter II *The European Union Judicial System*

Treaty Establishing the European Economic Community, 298 UNTS 3, 25 March 1957

Treaty of the European Union, Maastricht Treaty, OJ C 191/01, 7 February 1992

Treaty of the European Union, Treaty of Amsterdam, OJ C 340/01, 2 October 1997

Treaty of the European Union, Treaty of Nice amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts, 26 February 2001, OJ C 80/01

Treaty of the European Union, Consolidated Version (Treaty of the European Union and Treaty on the Functioning of the European Union), OJ C 83/13, 30 March 2010

Consolidated Version of the Rules of Procedure of the Court of Justice of the European Union, OJ C 177/01, 2 July 2010

Protocol on the Statute of the Court of Justice of the European Union, OJ C 310/207, 16 December 2004

Chapter III ***European Human / Fundamental Rights***

Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework (MAF) for the FRA for 2007-2012

European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No. 5)

First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952 (ETS No. 9)

Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017 (18645/11 FREMP 115 JAI 954 COSCE 23 COHOM 299)

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, 16 September 1963 (ETS No. 046)

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, 28 April 1983 (ETS No.: 114)

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984 (ETS No. 117)

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 2000 (ETS No. 177)

Regulation (EC) No. 168/2007 establishing a European Union Agency for Fundamental Rights

Chapter IV ***Migration and Asylum Law***

a. EU's Competence in Migration and Asylum Matters

Action Plan Implementing the Stockholm Programme; Brussels, 20.4.2010; COM(2010) 171 final

Communication from the Commission to the Council and the European Parliament: Report on Implementation of the Hague Programme for 2007 (2.7.2008; COM(2008) 373 final)

Communication from the Commission to the Council and the European Parliament: Report on the implementation of The Hague programme for 2006 (COM(2007) 373 final; 3.7.2007)

Communication from the Commission to the Council and the European Parliament – Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations, (COM(2004) 4002 final; 2.6.2004)

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Justice, Freedom and Security in Europe since 2005: An evaluation of The Hague programme and action plan Brussels, (COM(2009) 263 final; 10.6.2009)

Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198; 12/8/2005)

European Commission, Green Paper on the Future of the Common European Asylum System, COM(2007) 301 final, 6 June 2007

European Pact on Immigration and Asylum, Council of the European Union, 13189/08 ASIM 68

JHA Trio Presidency Programme January 2010 - June 2011 (5008/10, 4/1/2010)

Tampere European Council 15 and 16 October 1999 – Presidency Conclusions

The Charter of Fundamental Rights of the EU (particularly Arts. 18 and 19), OJ C 83/389, 30 March 2010

The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (OJ C53/01, 3.3.2005)

The Hague Programme: strengthening freedom, security and justice in the European Union (16054/04; 13 December 2004)

The Stockholm Programme - An open and secure Europe serving and protecting citizens (OJ C 115 4/5/2010 P.1)

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Treaty on the Functioning of the EU, Title V, Chapter 2, Consolidated version, OJ C 83/47, 30 March 2012, 75

b. The European Asylum System

Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers, COM (2011) 320 final. Brussels, 1.6.2011

Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status COM(2011) 319 final. Brussels, 1.6.2011

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

Directive on Asylum Procedures (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status)

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i. General

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The Schengen Acquis as referred to in Article 1(2) of Council Decision 1999/435/EC of 20 May 1999 (OJ L 239/1, 22.9.2000)

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Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis (corrigendum) (20 May 1999)

Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis (20 May 1999)

Commission Recommendation of 6 November 2006 establishing a common “Practical Handbook of Border Guards (Schengen Handbook)” to be used by Member States’ competent

authorities when carrying out the border control of persons (C(2006) 5186 final) as amended by Commission Recommendation of 25 June 2008 (C(2008) 2976 final)

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ii. Schengen Information System (SIS)

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Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code of the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p.1) as amended by regulation (EC) No 296/2008 of the European Parliament as regards the implementing powers conferred on the Commission (OJ L 97, 9.4.2008, 60)

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Chapter VI ***Environmental Law***

a. Principles of European Environmental Law

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b. Sectorial Regulation

i. Air Pollution

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Commission Decision of 29 April 2004 laying down a questionnaire to be used for annual reporting on ambient air quality assessment under Council Directives 96/62/EC and 1999/30/EC and under Directives 2000/69/EC and 2002/3/EC of the European Parliament and of the Council [notified under document number C(2004) 1714] (Text with EEA relevance) (2004/461/EC)

Commission Directive 2000/71/EC of 7 November 2000 to adapt the measuring methods as laid down in Annexes I, II, III and IV of Directive 98/70/EC of the European Parliament and of the Council to technical progress as foreseen in Article 10 of that Directive.

Council Decision of 27 January 1997 establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the Member States (97/101/EC)

Council Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control

Council Directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates, as last amended by Directive 89/427/EEC

Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide, as last amended by Council Directive 85/580/EEC

Council Directive 94/66/EC amending Directive 88/609/EEC on the limitation of emissions of certain pollutants into the air from large combustion plants

Directive 2000/76/EC of the European Parliament and of the Council of 4th December 2000 on the incineration of waste.

Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from Large Combustion Plants

Directive 2001/81/EC of the European Parliament and the Council on National Emission Ceilings for certain pollutants (NEC Directive)

Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels (Text with EEA relevance)

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

Directive 2008/50/EC on ambient air quality and cleaner air for Europe

Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC.

Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer

ii. Noise pollution

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise

Directive 86/188/EEC on the protection of workers from the risks related to exposure to noise at work

iii. Water protection and management

Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive, WFD)

Directive 2006/118/EC of 12 December 2006 on the protection of groundwater against pollution and deterioration

Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC

Directive 91/271/EEC of 21 May 1991 on Urban Waste Water Treatment

Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources

iv. Protection of the Marine Environment

Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council

Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements

Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)

Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member State, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

The Convention for the Protection of Marine Environment and the Coastal Region of the Mediterranean of 1995 (further to the earlier version of 1976) – the Barcelona Convention (UNEP-MAP)

The Convention for the Protection of the Black Sea of 1992 – the Bucharest Convention.

The Convention for the Protection of the Marine Environment in the North-East Atlantic of 1992 (further to earlier versions of 1972 and 1974) – the OSPAR Convention (OSPAR)

The Convention on the Protection of the Marine Environment in the Baltic Sea Area of 1992 (further to the earlier version of 1974) – the Helsinki Convention (HELCOM)

v. Waste Management

1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1673 UNTS 57/ [1992] ATS 7/ 28 ILM 657 (1989)

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Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils

Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry

Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry

Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture

Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances

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

Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)

Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste

Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles

Directive 2000/76/EC of 4 December 2000 on the incineration of waste

Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment

Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)

Directive 2008/98/EC of 19 November 2008 on waste (Waste Framework Directive)

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste

Rotterdam Convention on the Prior Informed Consent Procedure in Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, 10 September 1998, United Nations, Treaty Series, vol. 2244, p. 337.

Stockholm Convention on Persistent Organic Pollutants, Stockholm, 22 May 2001, United Nations, Treaty Series, vol. 2256, p.119.

vi. Nature Conservation and Species Protection

Council Directive 92/ 43/ EEC of May 1992 on the conservation of natural habitats and of wild fauna and flora (The Habitats Directive)

Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds (The Birds Directive)

vii. Industrial Emissions

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

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

Council Directive of 20 February 1978 on waste from the titanium dioxide industry (78/176/EEC)

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- [Case C-465/03](#) *Kretztechnik* [2005] ECR I-04357
- [Case C-333/91](#) *Satam* [1993] ECR I-03513
- [Case C-342/87](#) *Genius Holding* [1989] ECR I-04227
- [Case C-90/02](#) *Bockemuehl* [2004] ECR I-03303
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- [Case C-348/87](#) *Sufa* [1989] ECR I-01737
- [Case C-453/93](#) *Bulthuis Griffioen* [1995] ECR I-02341
- [Case C-237/09](#) *De Fruytier* [2010] ECR I-04985
- [Case C-216/97](#) *Gregg and Gregg* [1999] ECR I-04947
- [Case C-253/07](#) *Canterbury Hockey Club* [2008] ECR I-07821
- [Case C-464/10](#) *Henfling, Davain, Tanghe* [2011] ECR I-00000
- [Case C-451/06](#) *Gabrielle Walderdorff* [2007] ECR I-10637
- [Case C-384/04](#) *Federation of technological industries (FTI)* [2006] ECR I-04191
- [Joined Cases C-354/03, C-355/03 and C-484/03](#) *Optigen* [2006] ECR I-00483
- [Case C-103/09](#) *Weald Leasing* [2012] ECR I-00000
- [Case C-277/09](#) *RBS Deutschland Holdings* [2012] ECR I-00000
- [Case C-425/06](#) *Part Service* [2008] ECR I-00897
- [Case C-255/02](#) *Halifax and Others* [2006] ECR I-01609
- [Case C-223/03](#) *Huddersfield* [2006] ECR I-01751
- [Case C-419/02](#) *BUPA* [2006] I-01685
- [Case C-260/95](#) *DSDF* [1997] ECR I-01005
- [Joined Cases C-439/04 and C-440/04](#) *Kittel and Recolta Recycling* [2006] ECR I-06161

Chapter VI **Environmental Law**

a. Principles of European Environmental Law

[Case C-341/95](#), Judgment of the Court of 14 July 1998, *Gianni Bettati v Safety Hi-Tech Srl*.

[Case C-92/79](#), Judgment of the Court of 18 March 1980, Commission of the European Communities v Italian Republic

[Case C-240/83](#), Judgment of the Court of 7 February 1985, Procureur de la République v Association de défense des brûleurs d'huiles usagées (ADBHU)

[Case C-302/86](#), Judgment of the Court of 20 September 1988, Commission of the European Communities v Kingdom of Denmark

[Case C-213/96](#), Judgment of the Court of 2 April 1998, Outokumpu Oy

[Case C-176/03](#), Judgment of the Court (Grand Chamber) of 13 September 2005, Commission of the European Communities v Council of the European Union

[Case C-155/91](#), Judgment of the Court of 17 March 1993, Commission of the European Communities v Council of the European Communities

[Case C-187/93](#), Judgment of the Court of 28 June 1994, European Parliament v Council of the European Union

[Case C-247/85](#), Judgment of the Court of 8 July 1987, Commission of the European Communities v Kingdom of Belgium

[Case C-205/08](#), Judgment of the Court (Second Chamber) of 10 December 2009, Umweltanwalt von Kärnten v Kärntner Landesregierung

[Case C-377/98](#), Judgment of the Court of 9 October 2001, Kingdom of the Netherlands v European Parliament and Council of the European Union

[Case C-58/08](#), Judgment of the Court (Grand Chamber) of 8 June 2010, The Queen, on the application of Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform

[Case C-76/08](#), Judgment of the Court (Second Chamber) of 10 September 2009, Commission of the European Communities v Republic of Malta

[Case C- 293/97](#), Judgment of the Court (Fifth Chamber) of 29 April 1999, The Queen v Secretary of State for the Environment and Ministry of Agriculture, Fisheries and Food, ex parte H.A. Standley and Others and D.G.D. Metson and Others

[Case C-331/88](#), Judgment of the Court (Fifth Chamber) of 13 November 1990, The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others

[Case C- 121/ 07](#), Judgment of the Court (Grand Chamber) of 9 December 2008, Commission of the European Communities v French Republic

[Case C- 333/08](#), Judgment of the Court (Third Chamber) of 21 January 2010, Société de Gestion Industrielle (SGI) v État belge

[Case C- 77/09](#), Judgment of the Court (Second Chamber) of 22 December 2010, Gowan Comércio Internacional e Serviços Lda v Ministero della Salute

[Case C- 6/04](#), Judgment of 20 October 2005, Commission v United Kingdom

[Case C-127/02](#), Judgment of the Court (Grand Chamber) of 7 September 2004, Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands

[Case C-2/90](#), Judgment of the Court of 9 July 1992, Commission of the European Communities v Kingdom of Belgium

[Case C-422/92](#), Judgment of the Court of 10 May 1995, Commission of the European Communities v Federal Republic of Germany

[Case C-209/98](#), Judgment of the Court of 23 May 2000, Entreprenørforeningens Affalds/Miljøsektion (FFAD) v Københavns Kommune

[Case C- 293/97](#), Judgment of the Court (Fifth Chamber) of 29 April 1999, The Queen v Secretary of State for the Environment and Ministry of Agriculture, Fisheries and Food, ex parte H.A. Standley and Others and D.G.D. Metson and Others

[Case C- 188/07](#), Judgment of the Court (Grand Chamber) of 24 June 2008, Commune de Mesquer v Total France SA and Total International Ltd

[Case C-254/08](#), Judgment of the Court (Second Chamber) of 16 July 2009, Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl v Comune di Casoria

[Case C- 172/08](#), Judgment of the Court (Second Chamber) of 25 February 2010, Pontina Ambiente Srl v Regione Lazio

[Cases C- 157/ 96](#), [C- 180/ 96](#), [C- 236/ 01](#) Judgment of the Court of 5 May 1998, The Queen v Ministry of Agriculture, Fisheries and Food, Commissioners of Customs & Excise, ex parte National Farmers' Union, David Burnett and Sons Ltd, R. S. and E. Wright Ltd, Anglo Beef Processors Ltd, United Kingdom Genetics, Wyjac Calves Ltd, International Traders Ferry Ltd, MFP International Ltd, Interstate Truck Rental Ltd and Vian Exports Ltd

[Cases C-378/08](#), [C-379/08](#) and [C-380/08](#), Judgment of the Court of 9 March 2010, Raffinerie Mediterranee (ERG) SpA v Ministero dello Sviluppo economico

[Joined Cases C-154/04 and C-155/04](#), Judgment of the Court (Grand Chamber) of 12 July 2005, The Queen, on the application of Alliance for Natural Health and Nutri-Link Ltd v Secretary of State for Health (C-154/04) and The Queen, on the application of National

Association of Health Stores and Health Food Manufacturers Ltd v Secretary of State for Health and National Assembly for Wales (C-155/04)

[Case T- 229/ 04](#), Judgment of the Court of First Instance (Second Chamber, extended composition) of 11 July 2007, Kingdom of Sweden v Commission of the European Communities

[Joined Cases C-14/06 and C-295/06](#), Judgment of the Court (Grand Chamber) of 1 April 2008, European Parliament (C-14/06) and Kingdom of Denmark (C-295/06) v Commission of the European Communities

[Case T-219/95 R](#), Order of the President of the Court of First Instance of 22 December 1995, Marie-Thérèse Danielsson, Pierre Largenteau and Edwin Haoa v Commission of the European Communities

b. Sectorial Regulation

i. Air Pollution

[Case C- 237/07](#), Judgment of the Court (Second Chamber) of 25 July 2008. Dieter Janecek v Freistaat Bayern. Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany

[Case C-251/07](#), Judgment of the Court (Fourth Chamber) of 11 September 2008. Gävle Kraftvärme AB v Länsstyrelsen i Gävleborgs län. Reference for a preliminary ruling: Högsta domstolen - Sweden

[Case C-317/07](#), Judgment of the Court (Second Chamber) of 4 December 2008. Lahti Energia Oy. Reference for a preliminary ruling: Korkein hallinto-oikeus - Finland

[Case C-343/09](#), Judgment of the Court (Fourth Chamber) of 8 July 2010. Afton Chemical Limited v Secretary of State for Transport. Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) - United Kingdom

[Case C-341/95](#), Judgment of the Court of 14 July 1998. Gianni Bettati v Safety Hi-Tech Srl. Reference for a preliminary ruling: Pretura circondariale di Avezzano – Italy

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ii. Noise pollution

[Case C-389/96](#), Judgment of the Court (Fifth Chamber) of 14 July 1998. Aher-Waggon GmbH v Bundesrepublik Deutschland

[Case C-120/10](#), Judgment of the Court (First Chamber) of 8 September 2011. European Air Transport SA v Collège d'Environnement de la Région de Bruxelles-Capitale and Région de Bruxelles-Capitale

[Case C-422/05](#), Judgment of the Court (Third Chamber) of 14 June 2007, Commission of the European Communities v Kingdom of Belgium

iii. Water Protection and Management

[Case C-32/05](#), Judgment of the Court (Third Chamber) of 30 November 2006. Commission of the European Communities v Grand Duchy of Luxemburg

[Case C-36/98](#), Judgment of the Court of 30 January 2001. Kingdom of Spain v Council of the European Union

[Case C-232/97](#), Judgment of the Court (Sixth Chamber) of 29 September 1999. L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland

[Case C-207/97](#), Judgment of the Court (Sixth Chamber) of 21 January 1999. Commission of the European Communities v Kingdom of Belgium

[Case C-184/97](#), Judgment of the Court (Sixth Chamber) of 11 November 1999, Commission of the European Communities v Federal Republic of Germany

[Case C 214/ 96](#) Judgment of the Court (Sixth Chamber) of 25 November 1998, Commission of the European Communities v Kingdom of Spain

[Case C-384/97](#), Judgment of the Court (Sixth Chamber) of 25 May 2000. Commission of the European Communities v Hellenic Republic

[Case C-261/98](#), Judgment of the Court (Second Chamber) of 13 July 2000. Commission of the European Communities v Portuguese Republic

[Case C-282/02](#), Judgment of the Court (Second Chamber) of 2 June 2005. Commission of the European Communities v Ireland

[Case C- 381/07](#), Judgment of the Court (Second Chamber) of 6 November 2008, Association nationale pour la protection des eaux et rivières - TOS v Ministère de l'Écologie, du Développement et de l'Aménagement durables

[Case C- 307/98](#), Judgment of the Court (Fifth Chamber) of 25 May 2000. Commission of the European Communities v Kingdom of Belgium

[Case C-92/96](#), Judgment of the Court (Fifth Chamber) of 12 February 1998. Commission of the European Communities v Kingdom of Spain

[Case C-56/90](#), Judgment of the Court of 14 July 1993. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

[Case C-322/86](#), Judgment of the Court of 12 July 1988. Commission of the European Communities v Italian Republic

iv. *Protection of the Marine Environment*

[Case C-440/05](#), Judgment of the Court (Grand Chamber) of 23 October 2007, Commission of the European Communities v Council of the European Union

[Case C-239/03](#), Judgment of the Court (Second Chamber) of 7 October 2004, Commission of the European Communities v French Republic

v. *Waste Management*

[Case C-252/05](#), Judgment of the Court (Second Chamber) of 10 May 2007. The Queen on the application of: Thames Water Utilities Ltd v South East London Division, Bromley Magistrates' Court

[Joined Cases C-372/85 to 374/85](#), Judgment of the Court (Fourth Chamber) of 12 May 1987, Ministère public v Oscar Traen and others

[Case C-114/01](#), Judgment, of the Court (Sixth Chamber) of 11 September 2003, AvestaPolarit Chrome Oy

[Case C-1/03](#), Judgment of the Court (Second Chamber) of 7 September 2004. Van de Walle and Others

[Case C-129/96](#), Judgment of the Court of 18 December 1997. Inter-Environnement Wallonie v Région wallonne

[Case C-194/01](#), Judgment of the Court (Fifth Chamber) of 29 April 2004. Commission v. Austria

[Case C-235/02](#), Order of the Court (Third Chamber) of 15 January 2004. Criminal proceedings against Marco Antonio Saetti and Andrea Frediani

[Case C-9/00](#), Judgment of the Court (Sixth Chamber) of 18 April 2002. Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus

[Case C-457/02](#), Judgment of the Court (Second Chamber) of 11 November 2004. Criminal proceedings against Antonio Niselli

[Case C-444/00](#), Judgment of the Court (Fifth Chamber) of 19 June 2003. The Queen, on the application of Mayer Parry Recycling Ltd, v Environment Agency and Secretary of State for

the Environment, Transport and the Regions, and Corus (UK) Ltd and Allied Steel and Wire Ltd (ASW)

[Case C-380/87](#), Judgment of the Court (Fifth Chamber) of 13 July 1989. Enichem Base and others v Comune di Cinisello Balsamo

[Case C-6/00](#), Judgment of the Court (Fifth Chamber) of 27 February 2002. ASA- Abfall Service AG (ASA) v Bundesminister für Umwelt, Jugend und Familie

[Case C-228/00](#), Judgment of the Court (Fifth Chamber) of 13 February 2003. Commission v Germany

[Case C-236/92](#), Judgment of the Court of 23 February 1994. Comitato di Coordinamento per la Difesa della Cava and others v Regione Lombardia and others

[Case C-494/01](#), Judgment of the Court (Grand Chamber) of 26 April 2005. Commission of the European Communities v Ireland.

[Case C-297/08](#), Judgment of the Court (Fourth Chamber) of 4 March 2010. Commission of the European Communities v Ireland.

[Case C-203/96](#), Judgment of the Court (Sixth Chamber) of 25 June 1998. Chemische Afvalstoffen Dusseldorp BV and Others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

[Case C-188/07](#), Judgment of the Court (Grand Chamber) of 24 June 2008. Commune de Mesquer v Total France SA and Total International Ltd

[Case C-254/08](#), Judgment of the Court (Second Chamber) of 16 July 2009. Futura Immobiliare srl Hotel Futura and Others v Comune di Casoria

[Case C-318/98](#), Judgment of the Court (Sixth Chamber) of 22 June 2000. Criminal proceedings against Giancarlo Fornasar, Andrea Strizzolo, Giancarlo Toso, Lucio Mucchino, Enzo Peressutti and Sante Chiarcosso

[Case C-424/02](#), Judgment of the Court (First Chamber) of 15 July 2004. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

[Case C-92/03](#), Judgment of the Court (Second Chamber) of 27 January 2005. Commission of the European Communities v Portuguese Republic

[Case C-463/01](#), Judgment of the Court (Grand Chamber) of 14 December 2004. Commission of the European Communities v Federal Republic of Germany

[Case C-309/02](#), Judgment of the Court (Grand Chamber) of 14 December 2004. Radlberger Getränkegesellschaft mbH & Co. and S. Spitz KG v Land Baden-Württemberg

[Case C-259/05](#), Judgment of the Court (First Chamber) of 21 June 2007. Criminal proceedings against Omni Metal Service

[Case C-192/96](#), Judgment of the Court (Sixth Chamber) of 25 June 1998. Beside BV and I.M. Besselsen v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

[Case C-215/04](#), Judgment of the Court (First Chamber) of 16 February 2006. Marius Pedersen A/S v Miljøstyrelsen

[Case C-472/02](#), Judgment of the Court (Fifth Chamber) of 19 October 2004. Siomab SA v Institut bruxellois pour la gestion de l'environnement

[Case C-209/98](#), Judgment of the Court of 23 May 2000. Entreprenørforeningens Affalds/Miljøsektion (FFAD) v Københavns Kommune

[Case C-324/99](#), Judgment of the Court of 13 December 2001. DaimlerChrysler AG v Land Baden-Württemberg

[Case C-113/02](#), Judgment of the Court (First Chamber) of 14 October 2004. Commission of the European Communities v Kingdom of the Netherlands

[Case C-389/00](#), Judgment of the Court (Fifth Chamber) of 27 February 2003. Commission of the European Communities v Federal Republic of Germany

[Case C-172/08](#), Judgment of the Court (Second Chamber) of 25 February 2010. Pontina Ambiente Srl v Regione Lazio

[Case C-6/03](#), Judgment of the Court (First Chamber) of 14 April 2005. Deponiezweckverband Eiterköpfe v Land Rheinland-Pfalz

vi. Nature Conservation and Species Protection

[Case C-247/85](#), Judgment of the Court of 8 July 1987. - Commission of the European Communities v Kingdom of Belgium

[Case C-252/85](#), Judgment of the Court of 27 April 1988. Commission of the European Communities v French Republic

[Case C-262/85](#), Judgment of the Court of 8 July 1987. Commission of the European Communities v Italian Republic

[Case C-412/85](#), Judgment of the Court of 17 September 1987. Commission of the European Communities v Federal Republic of Germany

[Case C-57/89](#), Judgment of the Court of 28 February 1991. Commission of the European Communities v Federal Republic of Germany

[Case C-157/89](#), Judgment of the Court of 17 January 1991. Commission of the European Communities v Italian Republic

[Case C-355/90](#), Judgment of the Court of 2 August 1993. Commission of the European Communities v Kingdom of Spain

[Case C-435/92](#), Judgment of the Court of 19 January 1994. Association pour la Protection des Animaux Sauvages and others v Préfet de Maine-et-Loire and Préfet de Loire-Atlantique

[Case C-44/95](#), Judgment of the Court of 11 July 1996. Regina v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds

[Case C-118/94](#), Judgment of the Court (Fifth Chamber) of 7 March 1996. Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente - Comitato Regionale, Lega Anti Vivisezione - Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra - Sezione di Venezia v Regione Veneto

[Case C-3/96](#), Judgment of the Court of 19 May 1998. - Commission of the European Communities v Kingdom of the Netherlands

[Case C-10/96](#), Judgment of the Court (Third Chamber) of 12 December 1996. Ligue royale belge pour la protection des oiseaux ASBL and Société d'études ornithologiques AVES ASBL v Région Wallonne, interveners: Fédération royale ornithologique belge ASBL

[Case C-166/97](#), Judgment of the Court (Fifth Chamber) of 18 March 1999. - Commission of the European Communities v French Republic

[Case C-96/98](#), Judgment of the Court (Fifth Chamber) of 25 November 1999. - Commission of the European Communities v French Republic

[Case C-371/98](#), Judgment of the Court of 7 November 2000. The Queen v Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd, interveners: World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust

[Case C-374/98](#), Judgment of the Court (Sixth Chamber) of 7 December 2000. Commission of the European Communities v French Republic.

[Case C-38/99](#), Judgment of the Court (Sixth Chamber) of 7 December 2000. Commission of the European Communities v French Republic

[Case C-103/00](#), Judgment of the Court (Sixth Chamber) of 30 January 2002. - Commission of the European Communities v Hellenic Republic

[Case C-117/00](#), Judgment of the Court (Sixth Chamber) of 13 June 2002. - Commission of the European Communities v Ireland

[Case C-127/02](#), Judgment of the Court (Grand Chamber) of 7 September 2004. - Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

[Case C-182/02](#), Judgment of the Court (Sixth Chamber) of 16 October 2003. - Ligue pour la protection des oiseaux and Others v Premier ministre and Ministre de l'Aménagement du territoire et de l'Environnement

[Case C-209/02](#), Judgment of the Court (Second Chamber) of 29 January 2004. Commission of the European Communities v Republic of Austria

[Case C-117/03](#), Judgement of the Court (Second Chamber) of 13 January 2005

vii. Industrial Emissions

[Joined Cases C-53/02 and C-217/02](#), Judgment of the Court (Sixth Chamber) of 1 April 2004. Commune de Braine-le-Château (C-53/02) and Michel Tillieut and Others (C-217/02) v Région wallonne, and BIFFA Waste Services SA and Others

[Case T-374/04](#), Judgment of the Court of First Instance (Third Chamber, extended composition) of 7 November 2007. Federal Republic of Germany v Commission of the European Communities

[Joined Cases C-165/09 to C-167/09](#), Judgment of the Court (First Chamber) of 26 May 2011 (references for a preliminary ruling from the Raad van State (Netherlands)) — Stichting Natuur en Milieu and Others (C-165/09) v College van Gedeputeerde Staten van Groningen, Stichting Natuur en Milieu and Others (C-166/09) v College van Gedeputeerde Staten van Zuid-Holland, Stichting Natuur en Milieu and Others (C-167/09) v College van Gedeputeerde Staten van Zuid-Holland

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[Joined C-175/98 and C- 177/ 98](#), Judgment of the Court (Fourth Chamber) of 5 October 1999. Criminal proceedings against Paolo Lirussi (C-175/98) and Francesca Bizzaro (C-177/98)

viii. Environmental Impact Assessment

[Case C-295/10](#), Judgment of the Court (Fourth Chamber) of 22 September 2011; Genovaitė Valčiukienė and Others v Pakruojis rajono savivaldybė and Others

[Case C-290/03](#), Judgment of the Court (First Chamber) of 4 May 2006; The Queen, on the application of: Diane Barker v London Borough of Bromley

[Case C-2/07](#), Judgment of the Court (Second Chamber) of 28 February 2008; Paul Abraham and Others v Région wallonne and Others

[Case C-142/07](#), Judgment of the Court (Third Chamber) of 25 July 2008; Ecologistas en Acción-CODA v Ayuntamiento de Madrid

[Case C-275/09](#), Judgment of the Court (First Chamber) of 17 March 2011; Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest

[Case C-435/97](#), Judgment of the Court (Sixth Chamber) of 16 September 1999; World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others

[Case C-201/02](#), Judgment of the Court (Fifth Chamber) of 7 January 2004; The Queen, on the application of Delena Wells v Secretary of State for Transport, Local Government and the Regions

[Case C-81/96](#), Judgment of the Court (Sixth Chamber) of 18 June 1998; Burgemeester en wethouders van Haarlemmerliede en Spaarnwoude and Others v Gedeputeerde Staten van Noord-Holland

[Case C-396/92](#), Judgment of the Court of 9 August 1994, Bund Naturschutz in Bayern e.V. and Richard Stahnsdorf and others v Freistaat Bayern, Stadt Vilsbiburg and Landkreis Landshut

[Case C-75/08](#), Judgment of the Court (Second Chamber) of 30 April 2009; The Queen, on the application of Christopher Mellor v Secretary of State for Communities and Local Government

[Case C-255/08](#), Judgment of the Court (Sixth Chamber) of 15 October 2009; Commission of the European Communities v Kingdom of the Netherlands

[Case C-66/06](#), Judgment of the Court (Second Chamber) of 20 November 2008; Commission of the European Communities v Ireland

[Case C-133/94](#), Judgment of the Court (Sixth Chamber) of 2 May 1996; Commission of the European Communities v Kingdom of Belgium

[Case C-72/95](#), Judgment of the Court of 24 October 1996; Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland

[Case C-392/96](#), Judgment of the Court (Fifth Chamber) of 21 September 1999. Commission of the European Communities v Ireland

[Case C-205/08](#), Judgment of the Court (Second Chamber) of 10 December 2009. Umweltanwalt von Kärnten v Kärntner Landesregierung

[Case C-227/01](#), Judgment of the Court (Second Chamber) of 16 September 2004. Commission of the European Communities v Kingdom of Spain

[Case C-332/04](#), Judgment of the Court (Third Chamber) of 16 March 2006. Commission of the European Communities v Kingdom of Spain

[Case C-508/03](#), Judgment of the Court (First Chamber) of 4 May 2006. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

[Case C-230/00](#), Judgment of the Court (Third Chamber) of 14 June 2001. Commission of the European Communities v Kingdom of Belgium

[Case C-159/06](#), Judgment of the Court (Sixth Chamber) of 26 October 2006. Commission of the European Communities v Republic of Finland

[Case C-190/90](#), Judgment of the Court of 20 May 1992; Commission of the European Communities v Kingdom of the Netherlands

[Joined Cases C-105/09 and C- 110/ 09](#), Judgment of the Court (Fourth Chamber) of 17 June 2010. Terre wallonne ASBL (C-105/09) and Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne

c. Enforcement and Procedural Rights

i. Environmental Liability

[Case C-378/08](#), Judgment of the Court (Grand Chamber) of 9 March 2010. Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA and Syndial SpA v Ministero dello Sviluppo economico and Others

[Case C-188/07](#), Judgment of the Court (Grand Chamber) of 24 June 2008. Commune de Mesquer v Total France SA and Total International Ltd.

[Case C-343/95](#), Judgment of the Court of 18 March 1997. Diego Cali & Figli Srl v Servizi ecologici porto di Genova SpA (SEPG)

[Case C-232/97](#), Judgment of the Court (Sixth Chamber) of 29 September 1999. L. Nederhoff & Zn. v Dijkgraaf en hoogheemraden van het Hoogheemraadschap Rijnland

[Joined Cases C-478/08 and C-479/08](#), Order of the Court (Eighth Chamber) of 9 March 2010. Buzzi Unicem SpA and Others v Ministero dello Sviluppo economico and Others (C-478/08) and Dow Italia Divisione Commerciale Srl v Ministero Ambiente e Tutela del Territorio e del Mare and Others (C-479/08)

[Joined Cases T-236/04 and T-241/04](#), Order of the Court of First Instance (Second Chamber) of 28 November 2005. European Environmental Bureau (EEB) and Stichting Natuur en Milieu v Commission of the European Communities

[Joined Cases C-379/08 and C-380/08](#), Judgment of the Court (Grand Chamber) of 9 March 2010. Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA and Syndial SpA v Ministero dello Sviluppo economico and Others (C-379/08) and ENI SpA v Ministero Ambiente e Tutela del Territorio e del Mare and Others (C-380/08)

ii. Procedural Rights

[Case C-266/09](#), Judgment of the Court (Fourth Chamber) of 16 December 2010. Stichting Natuur en Milieu and Others v College voor de toelating van gewasbeschermingsmiddelen en biociden

[Case C-321/96](#), Judgment of the Court (Sixth Chamber) of 17 June 1998. Wilhelm Mecklenburg v Kreis Pinneberg - Der Landrat

[Case C-524/09](#), Judgment of the Court (Fourth Chamber) of 22 December 2010, Ville de Lyon v Caisse des dépôts et consignations

[Case C-217/97](#), Judgment of the Court (Sixth Chamber) of 9 September 1999. Commission of the European Communities v Federal Republic of Germany

[Case C-240/09](#), Judgment of the Court (Grand Chamber) of 8 March 2011. Lesoochránárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky

[Case T-362/08](#), Judgment of the Court (Grand Chamber) of 26 January 2010. Internationaler Hilfsfonds eV v European Commission

[Case C- 524/09](#), Judgment of the Court (Fourth Chamber) of 22 December 2010. Ville de Lyon v Caisse des dépôts et consignations

[Case C-427/07](#), Judgment of the Court (Second Chamber) of 16 July 2009. Commission of the European Communities v Ireland

[Joined Cases T-120/10 and T-449/10](#), Order - 09/11/2011 – ClientEarth and Others v Commission, and [Case T-111/11](#) ClientEarth v Commission

B. European court of Human Rights

Chapter III European Human / Fundamental Rights

Case Silver and others v. UK, 25 March 1983

Case Akman v. Turkey, 26 June 2001

Case Aksoy v. Turkey, 18 December 1996

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