

**EUFJE CONFERENCE, THE HAGUE, 26-27 OCTOBER 2012
THE ROLE OF EUROPEAN UNION LAW IN THE NATIONAL
ENVIRONMENTAL COURTS OF THE MEMBER STATES**

**Recent Commission policy developments relevant to the role of the national
judge**

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Ladies and Gentlemen,

On behalf of the European Commission, and on behalf of Marianne Wenning, I would like to welcome all the participants and to thank both the European Forum of Judges for the Environment and the Council of State of the Netherlands for organising this conference. It is very good to see the continuity represented by this event. The Commission has been supporting the Forum since its creation in 2004 and greatly values its work in fostering the exchange of knowledge of environmental law among judges and in promoting correct enforcement.

It might be useful to briefly update you on what DG Environment has been doing over the past year in subject-areas of relevance to the conference. In particular, I would like to refer to an implementation communication that appeared in March of this year and to the follow-up as well as to the preparations for a 7th Environmental Action Programme.

When he took up his portfolio, Commissioner Potočnik stated that implementation of EU environment law would be one of his priorities. He was also very keen to present his ideas in a Commission communication.

The resulting communication, COM (2012) 95, *Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness*, differs from a 2008 implementation communication¹ in that it focuses exclusively on Member States and does not address Commission policy on infringements. Existing Commission policy on environment infringements – which places an emphasis on addressing strategically important infringements – was maintained.

¹ COM(2008) 773 final

Instead, the 2012 communication sets out ways in which Member States can themselves improve implementation, where appropriate with help from the Commission. There are two main themes, knowledge and responsiveness.

We all depend on knowledge to make wise and appropriate decisions on the environment. Thanks to the possibilities of information and communication technologies (ICT), there is a strong and general long-term societal trend towards making knowledge more easily accessible. To give just one example, the CURIA website posts decisions of the Court of Justice of the European Union (CJEU) which were once only available in printed reports. In the field of the environment, the Aarhus Convention and instruments such as the Access to Information Directive² give an impetus to this trend and the communication seeks to build on what has already been achieved by widening the extent to which information is made available online.

One of the points that came up in the prior stakeholder consultations was that there is a general weakness in the collection and dissemination of data on implementation and enforcement. This hampers the identification of what works and what doesn't work when it comes to enforcement actions. The communication suggests that this deficit should be addressed, inter alia through dialogue with the key networks, including this Forum.

The second section of the communication relates to all the key ways in which Member States respond to problems of non-compliance or issues of compliance that arise at national level. It proposes that the Commission

- Seek to strengthen how inspections and surveillance are undertaken at national level;
- Explore an initiative on complaint-handling and mediation at national level;
- Explore how greater certainty could be provided to national courts in relation to access to justice, including through guidance and new legislation;
- Continue active co-operation with networks of professionals, including this Forum.

These initiatives are not a random assemblage but are intended to be complementary. The aim is to enhance the overall reliability and resilience of national checks and balances.

² Directive 2003/4 on public access to environmental information and repealing Council Directive, 90/313/EEC, OJL 41, 14.2.2003

In terms of the work and concerns of the Forum, it is worth stressing the continued relevance of – and the Commission's continued commitment to - the special programme for co-operation with national judges launched in 2008. This is considered a valuable example of network cooperation.

It is also worth mentioning a reference in the communication to trans-network cooperation. In the Commission's contacts with other networks, such as the network of inspectorates, IMPEL, one of the issues that comes up is the effectiveness of the enforcement chain and the value of promoting a common understanding of the law and its challenges across the chain. One of our own challenges in DG Environment is to see whether it will be possible to organise a trans-network event while respecting the autonomous concerns of each individual network.

Moving forward with initiatives mentioned in the communication takes time but the following are some of the developments have taken place since March.

First of all, some of the key ideas in the communication have been incorporated into a draft Commission proposal for a 7th Environmental Action Programme which aims to shape EU environment policy up to the end of the decade. The draft is expected to be approved by the Commission in the next month or so.

Second, new studies have been undertaken on access to justice, complaint-handling and mediation in a selection of Member States. The access to justice studies explore the extent to which Member State rules on access are aligned with recent important case-law of the CJEU, including C-240/09, *Slovak Bears*, and the results are due to be presented at a conference in Brussels next month.

Commissioner Potočník is keen to make progress on improving access to justice, especially given that the case-law underlines the need to facilitate access to national courts.

In recent years, Commission practice has tended to recognise more systematically the role of the national judge in controversies that are referred to the Commission by way of complaints. A significant number of complaints are closed on the basis that parallel national proceedings are pending.³ However, deferment to the outcome of national proceedings is only possible if the national judge is seized.

Complainants still argue that, in some Member States, standing rules are too restrictive or that litigation is too costly and inefficient. There are several

³ Closure is a matter of discretion and is decided on a case-by-case basis. Commission infringements, such as for non-conformity of national legislation, continue even if some points overlap with national litigation.

ongoing Commission infringement proceedings on national access provisions and these are likely to lead to further CJEU case-law. Nevertheless, while these proceedings may eventually bring about changes in the conditions of access, the Environment Commissioner considers it important to also try to improve access through agreed legislative change. This is therefore the focus of current work in his services.

Ladies and Gentlemen,

I hope that this gives you some sense of what we have been doing and what we plan to do to improve implementation and enforcement in the coming period. I also hope that it underlines the Commission's commitment to continued support for the Forum and look forward to a productive conference.

Thank you for your attention.