



EJTN AD Webinar Series

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CJEU environmental case-law update

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Summary

- Introductory notes

- 2019-2020 CJEU case-law in review
 - *Potpourri* of environmental case-law
 - Air quality
 - Climate change



Introductory notes

EU environment policy



- One of the world's highest environmental standards
 - 3 TEU: 'sustainable development' / 'high level of protection'
 - 191 TFEU: environmental principles
 - Precautionary principle
 - Preventive action
 - Environmental damage rectified at source
 - Polluter should pay

Proceedings before the CJEU

Court of Justice (CJ)

- References for a preliminary ruling (267 TFEU)
- Actions for infringement (258 TFEU; 260 TFEU)
- Appeals
- (Interim measures)



General Court (GC)

- Actions for annulment (263 TFEU)
- Actions for failure to act (265 TFEU)
- Actions for damages (268 TFEU)
- (Interim measures)

The key role of national judges

- Preliminary ruling procedure (Art. 267 TFEU)
 - National judge may refer to CJ a question on the validity or interpretation of EU law (must do so if no appeal possible under national law)

- “Direct effect” (Case Van Gend en Loos, C-26/62)
 - National judge is bound to enforce the rights conferred to individuals by a provision* of EU law

*“Self-executing” provision

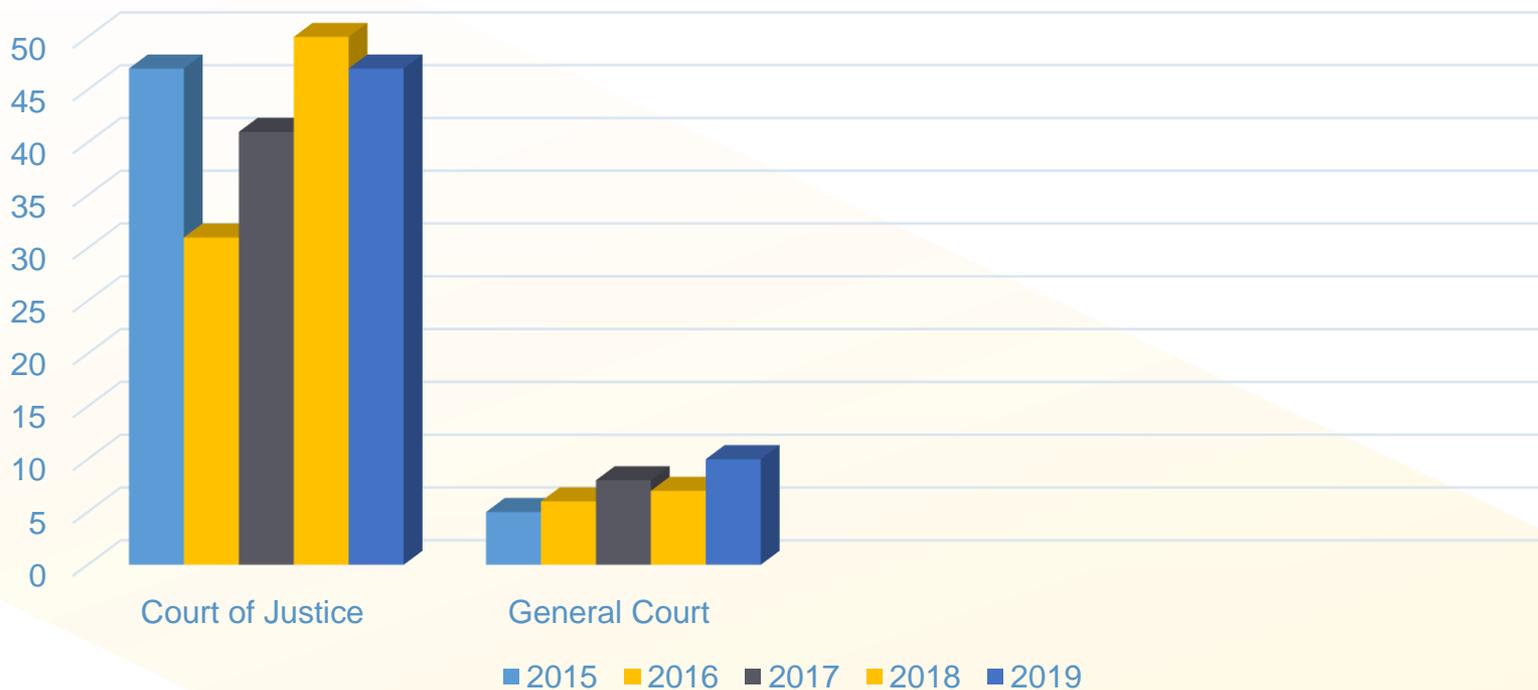
Actions for infringement

- Art. 258 TFEU
 - Commission can bring action before the CJ for a finding that a MS has failed to fulfil an obligation under EU law.

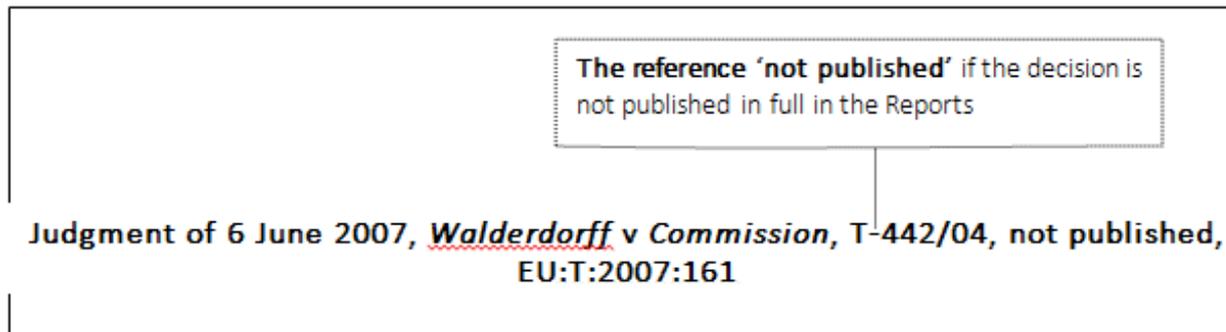
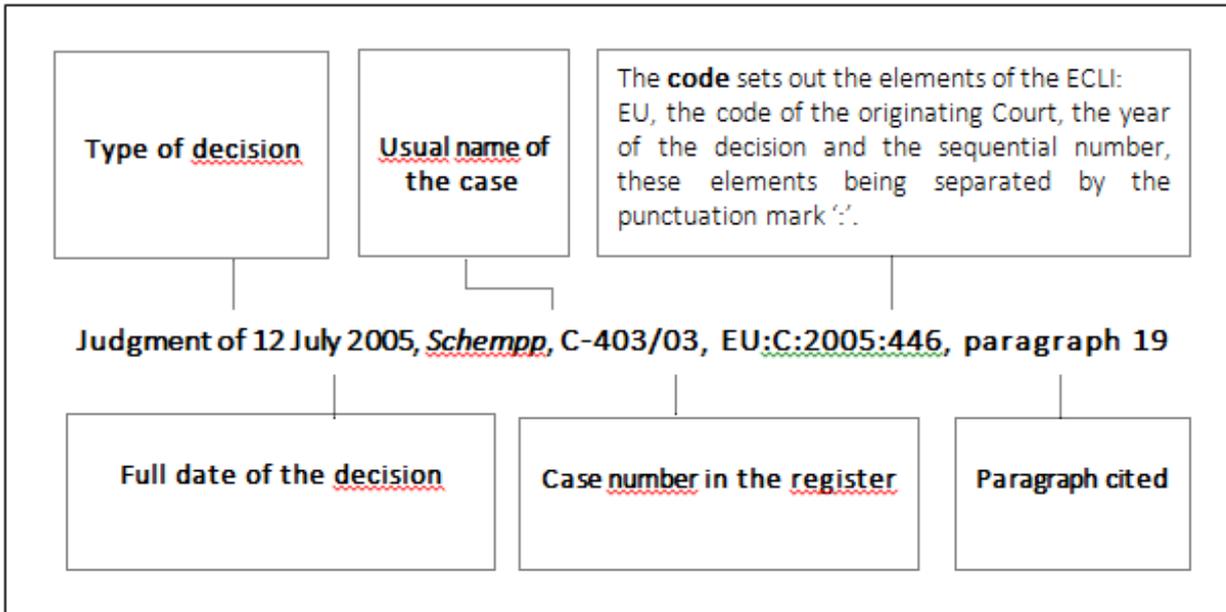
- Art. 260 TFEU
 - Commission can file a second action asking that the CJ imposes a lump sum and/or a recurring penalty payment on the MS until the infringement is resolved.

Statistics – 2015-2019

Environmental cases



Method of citing CJEU case-law





CJEU case-law in review 2019-2020

Actions for infringement: Art. 258 TFEU

- Judgment of 21 March 2019, *Commission v Italy* (C-498/17)
 - Italy has failed to fulfil its obligations under the directive on the **landfill of waste** (Directive 1999/31) as regards 44 landfill sites
- Judgment of 28 March 2019, *Commission v Ireland* (C-427/17)
 - Ireland violates **Urban waste water directive** (Directive 91/271/EEC)

Actions for infringement: Art. 260 TFEU

➤ Judgment of 12 November 2019, *Commission v Ireland* (C-261/18, Grand Chamber)

- Ireland is ordered to pay pecuniary penalties for failing to comply with an earlier judgment of the Court which required, in particular, that an **environmental assessment** be carried out in respect of a **wind farm**

➤ Judgment of 27 February 2020, *Commission v Greece* (C-298/19)

- Greece is ordered to pay a lump sum of 3.5 million euros for having been slow in implementing EU law on the protection of waters against **pollution caused by nitrates** from agricultural sources



Preliminary rulings

Nitrates Directive

➤ Judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18)

- CJ stated, for the first time, that **natural and legal persons directly concerned by the pollution of groundwaters can rely, before the national courts, on certain provisions of Directive 91/676** concerning the protection of waters against pollution caused by nitrates from agricultural sources ('the Nitrates Directive').



North Burgenland (Austria)

Environmental liability (Directive 2004/35)

- Judgment of 9 July 2020, *Naturschutzbund Deutschland* (Case C-297/19)
 - **Legal persons governed by public law may be liable for environmental damage caused by activities carried out in the public interest pursuant to a statutory assignment of tasks, such as the operation of a pumping station for the purpose of draining agricultural land.**

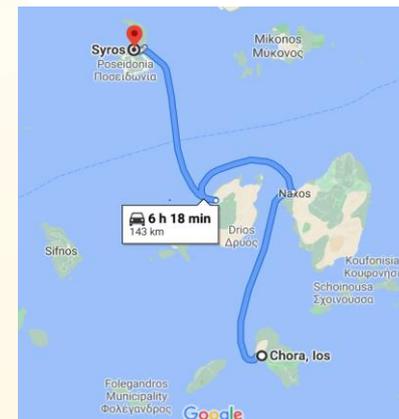


Eiderstedt peninsula (Germany)

EIA Directive (public participation)

➤ Judgment of 7 November 2019, *Alain Flausch and Others* (C-280/18)

- Interpretation of Art. 6, 9 and 11 Directive 2011/92/EU: When the public is not put in a **position to actually participate in the environmental impact assessment** for a project, a time limit for bringing proceedings against the decision granting consent for the project cannot be relied on against the public.



Ios / Syros (Greece)

EIA Directive (Nuclear power)

➤ Judgment of 29 July 2019, *Inter- Environnement Wallonie ASBL and Others* (C-411/17)

- Belgian law extending the operating life of nuclear power stations was adopted without the **required environmental assessments** being carried out first;

BUT ...

- not excluded that the **effects of the law may provisionally be maintained** where there is a genuine and serious threat of an interruption to electricity supply.



*Doel 1 and 2 Power Stations
(Belgium)*

Directive 2001/42 (assessment plans and programmes)

- Judgment of 25 June 2020, *A and Others* (C-24/19, Grand Chamber)
 - An order and a circular that set out the general conditions for the grant of development consent for the installation and operation of wind turbines must themselves be the subject of a **prior environmental assessment**.



Wind farm, Aalter and Nevele
(Belgium)

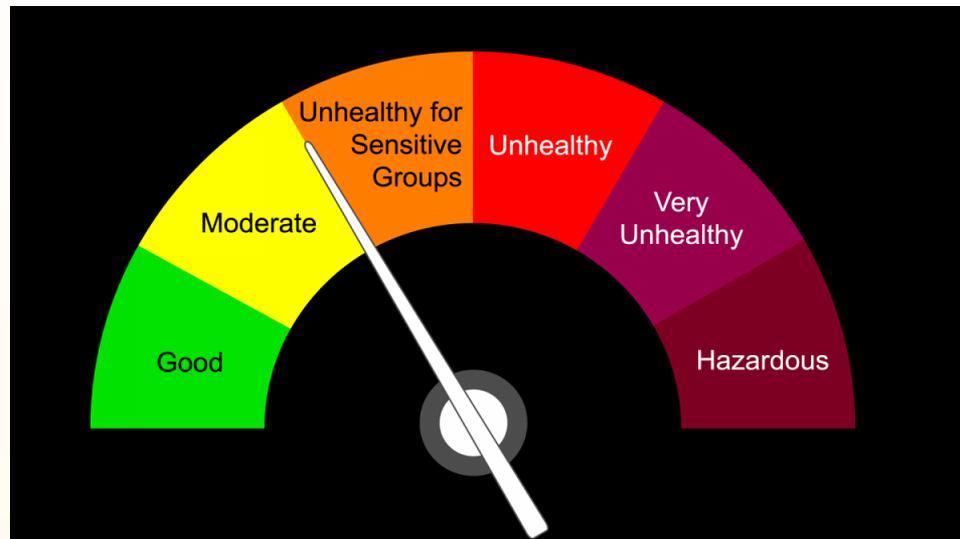
Habitats Directive (Directive 92/43)

- Judgment of 11 June 2020, *Alianța pentru combaterea abuzurilor* (C-88/19)
 - **Protection** of animal species provided for in the Habitats Directive also **extends to specimens that leave their natural habitat** and stray into human settlements.
 - Capture and relocation of a wolf found in a village can therefore be justified only where they form the subject of a derogation adopted by the competent national authority.



Wolf (Romania)

Air quality



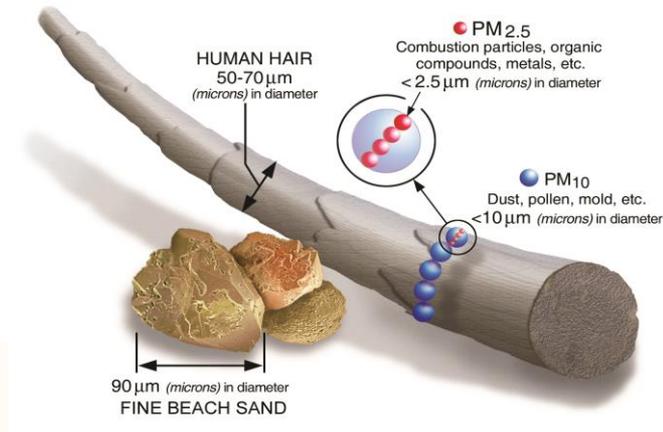
EU legislation on ambient air quality

- Directive 2008/50/EC : Ambient Air Quality
- Directive 2010/75 : Industrial emissions
- Directive (EU) 2016/802: Fuel quality standards – reduction in sulphur content of certain liquid fuels
- Directive (EU) 2016/2294: National emission ceilings

Breach of limit values

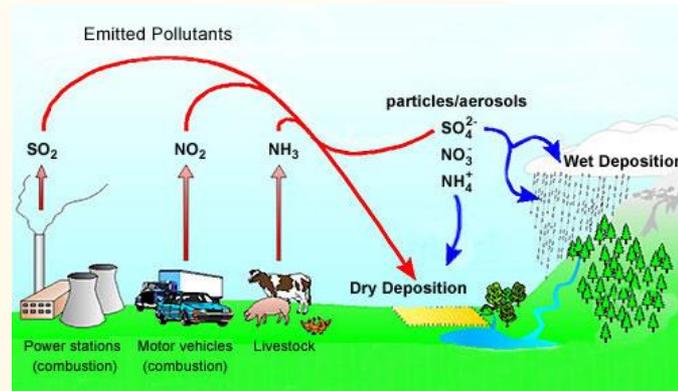
PM₁₀

(Particulate matter)



NO₂

(Nitrogen dioxide)



Actions for infringement: phase I

- Failure to comply with PM₁₀ limits (art. 5 Directive 1999/30/EC)
 - Judgment of 10 May 2011, *Commission v Sweden* (C-479/10)
 - Judgment of 15 November 2012, *Commission v Portugal* (C-34/11)
 - Judgment of 19 December 2012, *Commission v Italy* (C-68/11)

- *Could Commission trigger art. 260 TFEU?*

Actions for infringement: phase II

- Judgment of 5 April 2017, *Commission v Bulgaria* (C-488/15)
- Judgment of 22 February 2018, *Commission v Poland* (C-336/16)
- Judgment of 30 April 2020, *Commission v Romania* (C-638/18)
 - Failure to comply with
 - art. 13 Directive 2008/50: systematically and continuously infringement of limit values (daily and annual) for concentrations of PM₁₀ levels
 - art. 23(1) Directive 2008/50: air quality plans not designed to keep the period of exceedance as 'short as possible'
- *Can lead to imposition of payments (art. 260 TFEU)*

Nitrogene dioxide (NO₂)

➤ Judgment of 24 October 2019, *Commission v France*, C-636/18

- Art. 13: Limit values in 12 agglomerations
 - structural problems irrelevant
 - highest values determine exceedance
 - absence of sufficiently strict standards for cars do not justify the exceedance
- Art. 23: Plans
 - general considerations with no specific provisions for areas concerned are insufficient

Pending infringement cases

➤ Air pollution and absence of protection of citizens

NO₂

- *Commission v Germany* (C-635/18)
- *Commission v UK* (C-664/18)
- *Commission v Italy* (C-573/19)
- *Commission v Bulgaria* (C-730/19)
- *Commission v Spain* (C-125/20)

PM₁₀

- *Commission v Hungary* (C-637/18)
- *Commission v Italy* (C-644/18) (Grand Chamber requested)

Euro 6 standard*

➤ Judgment of 13 December 2018 (cases T-339/16, *Ville de Paris v Commission*, T-352/16 *Ville de Bruxelles v Commission*, T391/16 *Ville de Madrid v Commission*)

- Cities of Paris, Brussels and Madrid contest Commission's Regulation 2016/646: excessively high oxides of nitrogen emission limits during the new real driving emission tests ('RDE tests')
- Admissibility of the actions – *locus standi*
- oxides of nitrogen emission limits set by the Euro 6 standard cannot be amended by the Commission
- Temporal effect of annulment

➤ **Appeal pending: C-177/19, C-178/19 and C-179/19**

(*) European emission standards define the acceptable limits for exhaust emissions of new vehicles sold in the European Union and EEA member states

Emissions CO₂ -pending cases

- *Daimler v Commission* (T-359/19)
- *Daimler v Commission* (T-509/20)
 - Actions seeking annulment of Commission Implementing Decisions (EU) 2019/583 and 2020/1035, in respect of the part that shows the average specific emissions of its CO₂ and CO₂ savings from eco-innovations.

Preliminary rulings

- Judgment of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, Grand Chamber)
 - CJ ruled for the first time on whether the national courts are empowered, or even obliged, to order the coercive detention of persons in charge of national authorities that persistently refuse to comply with a judicial decision enjoining them to perform their obligations under EU law.

References for preliminary ruling

- □ Judgment of 26 June 2019, *Craeynest and Others*, C-723/1
 - Directive 2008/50/EC
 - Air quality plan drawn up for Brussels
 - National courts have jurisdiction to review the choice of location of air quality measuring stations and to take all necessary measures against the national authority concerned

See also...

➤ Judgment of 25 July 2008, *Janecek* (C-237/07)

- Directive 96/62/EC
- CJ held that an individual can require the competent national authorities to draw up an action plan where there is a risk that the limit values or alert thresholds may be exceeded

➤ Judgment of 19 November 2014. *ClientEarth* (C-404/13)

- Directive 2008/50/EC
- CJ clarifies Member States' obligations as regards respecting the limit values for nitrogen dioxide

Climate change litigation

➤ Order of 8 May 2019, *Carvalho e.a. v Parliament and Council* (Case T-330/18)

- « People's Climate » Case
- Applicants (10 families from Portugal, Germany, France, Italy, Romania, Kenya, Fiji and the Swedish Saami Youth Association) are **not sufficiently or directly affected** by EU policies to challenge these in court.
- Greenhouse gas emissions; 2030 climate and energy package
- Climate change may certainly affect **individuals' fundamental rights**. However, in actions for annulment under Article 263(4) TFEU plaintiffs must be directly and individually concerned by the challenged measure

Climate change litigation

- Order of 6 May 2020, *Sabo e.a. v Parliament and Council* (T-141/19)
 - « EU Biomass » Case
 - Action for annulment of Directive (EU) 2018/2001 (Renewable Energy Directive) in so far as it includes forest biomass among the sources of renewable energy
 - Applicants (group of individuals and civil society organisations) have **no *locus standi***

- **Appeal pending: C-297/20 P**

Thank you!

