



BASICS OF THE EU ENVIRONMENTAL LAW

Environmental policy of EU, its history and development, aims and instruments.
The role of the environmental action plans.



Autumn 2017
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Course introduction

- 1. Environmental policy of EU, its history and development, aims and instruments. The role of environmental action plans.**
- 2. EU environmental law - sources of law, system of environmental regulation and relation to other EU policies, environmental law**
- 3. Harmonization of environmental requirements. EU law transposition and implementation. The role of national courts and the role of CJEU.**
- 4. Access to environmental information, participation of public in environmental decision-making and access to justice - the 3 pillars of Aarhus Convention.**
- 5. Environmental impact assessment.**



Course introduction

6. Air protection.

7. Ozone layer regulation / Global climate change in EU environmental policy.

8. Nature protection. Natura 2000.

9. Biodiversity protection. / Regulation of trade in endangered species of animals and plants.

10. Inland waters protection.

11. Waste management.



Course introduction

- Reading assignments and cases necessary for discussions will be specified during the course.
- Credit requirements: 1. semester paper/ppt. Presentation, 2. written test, 3. participation in lessons
- The examination in the form of a written test and one semestral paper/ppt.presentation.



We are not eco-terrorists, but... C-379/87 (Anita Groener):

Teachers have an essential role to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils.



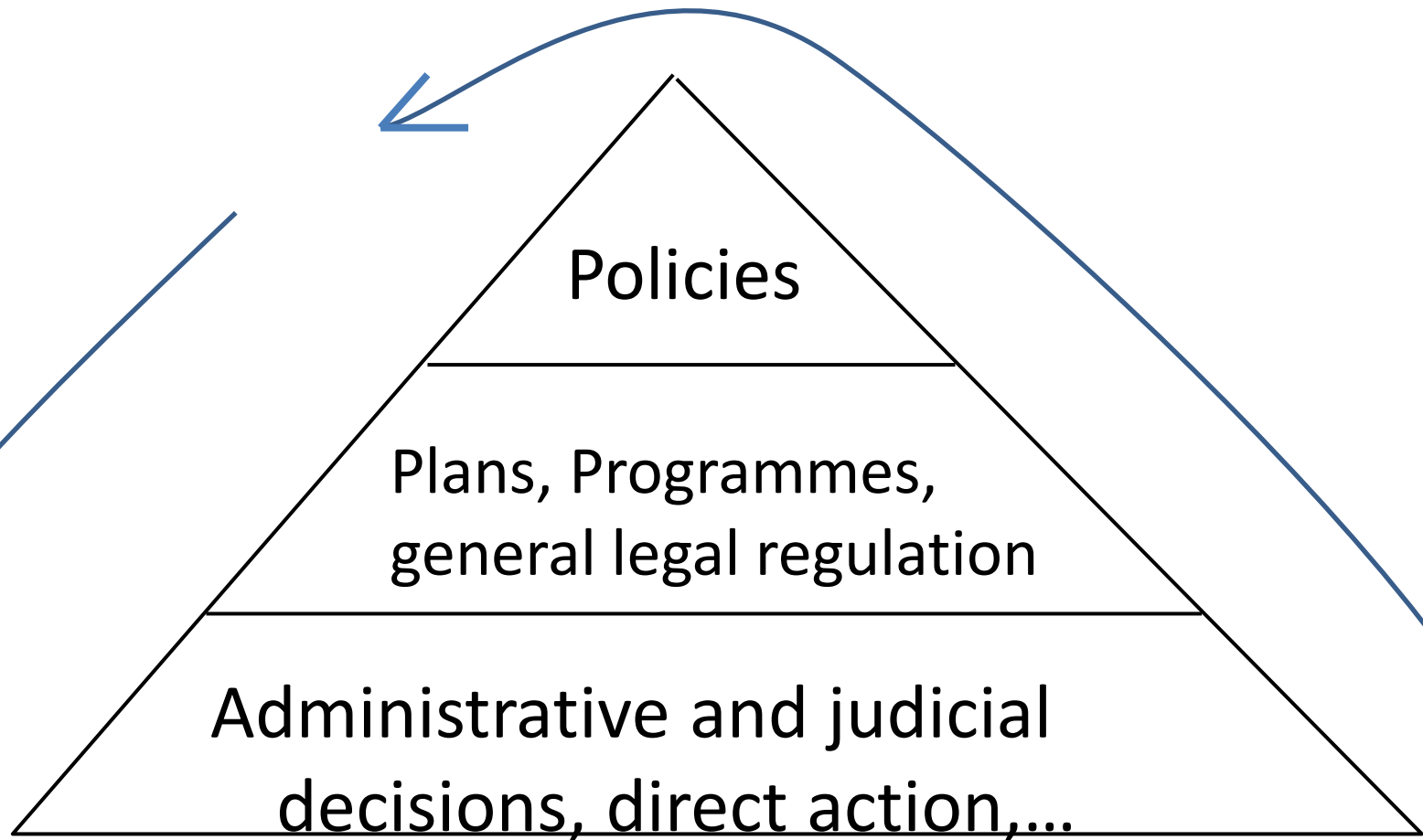
Introduction and basic info

Since when does the EU protect the environment?
And why?





Policy x Legal regulation





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European Commission - Press release

A New Start: European Commission work plan to deliver jobs, growth and investment

Strasbourg, 16 December 2014

Today the European Commission adopted its Work Programme for 2015 – setting out the actions the Commission intends to take over the next 12 months to make a real difference for jobs, growth and investment and bring concrete benefits for citizens. This is an agenda for change.

Citizens want less EU interference in their daily lives, especially where Member States are better placed to act and provide solutions. They expect the EU to make a difference on the big economic and social challenges, such as fighting unemployment and improving competitiveness. Citizens expect the EU to be more open about what it does and how it does it. The adoption of the Work Programme is a good starting point as its outlines in all transparency what the EU will and will not do in 2015.

President **Jean-Claude Juncker** said: *"This Commission was elected on the basis of a clear political mandate: the ten priorities set out in our Political Guidelines. Today's Work Programme is the translation of those ten priorities into concrete first deliverables. Citizens expect the EU to make a difference on the big economic and social challenges and they want less interference where Member States are better equipped to give the right response. That is why we committed to driving change and to leading an EU that is bigger and more ambitious on big things, and smaller and more modest on small things."*

First Vice-President **Frans Timmermans** said: *"What we are presenting today is a roadmap for getting Europe back to work, based on clear priorities. 2015 will be the year for delivering the announced Investment Plan to boost our economy, opening up the opportunities of the Digital Single Market for citizens and business, launching European Energy Union, and putting forward a new, balanced European Agenda on Migration."*

We need to **clear the decks** so political efforts are focussed on the real priorities: we have looked through every pending proposal currently on the table of the EU institutions and decided whether we want to maintain, amend or withdraw them. We want results on the ground, so where it is clear existing proposals will not be agreed in a way that meets our objectives, we will propose alternative approaches. This way we will make sure that our Union focuses both on what truly matters and on delivering concrete results for citizens. This time things really are different."

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Conservation

Conservationists declare victory for wildlife as EU saves nature directives

EU president abandons plan to overhaul flagship birds and habitats directives following a huge public campaign



This article is 2 months old

3049 91

Arthur Neslen

Wednesday 7 December 2016 16.32 GMT



Swans on Lough Neagh in Co Antrim, Northern Ireland. Photograph: Radharc Images/Alamy Stock Photo

The European commission president, [Jean-Claude Juncker](#), has been forced to abandon an overhaul of flagship nature laws after an unprecedented campaign



EU Environmental Policy - Principles

- 191 (2) TFEU: Community policy on the environment shall **aim at a high level of protection** taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of other Community policies.



Article 192

- (1) **The Council**, consulting the Economic and Social Committee, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 191.
 - provisions primarily of a fiscal nature;
 - measures concerning town and country planning, land use with the exception of waste management and measures of a general nature, and management of water resources;
 - measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.
- (2) Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy.
- (3) Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of:
 - temporary derogations and/or
 - financial support from the Cohesion Fund



Article 193

- **The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.**
- **Gold-plating?**



C-141/14 (European Commission v Republic of Bulgaria)

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.

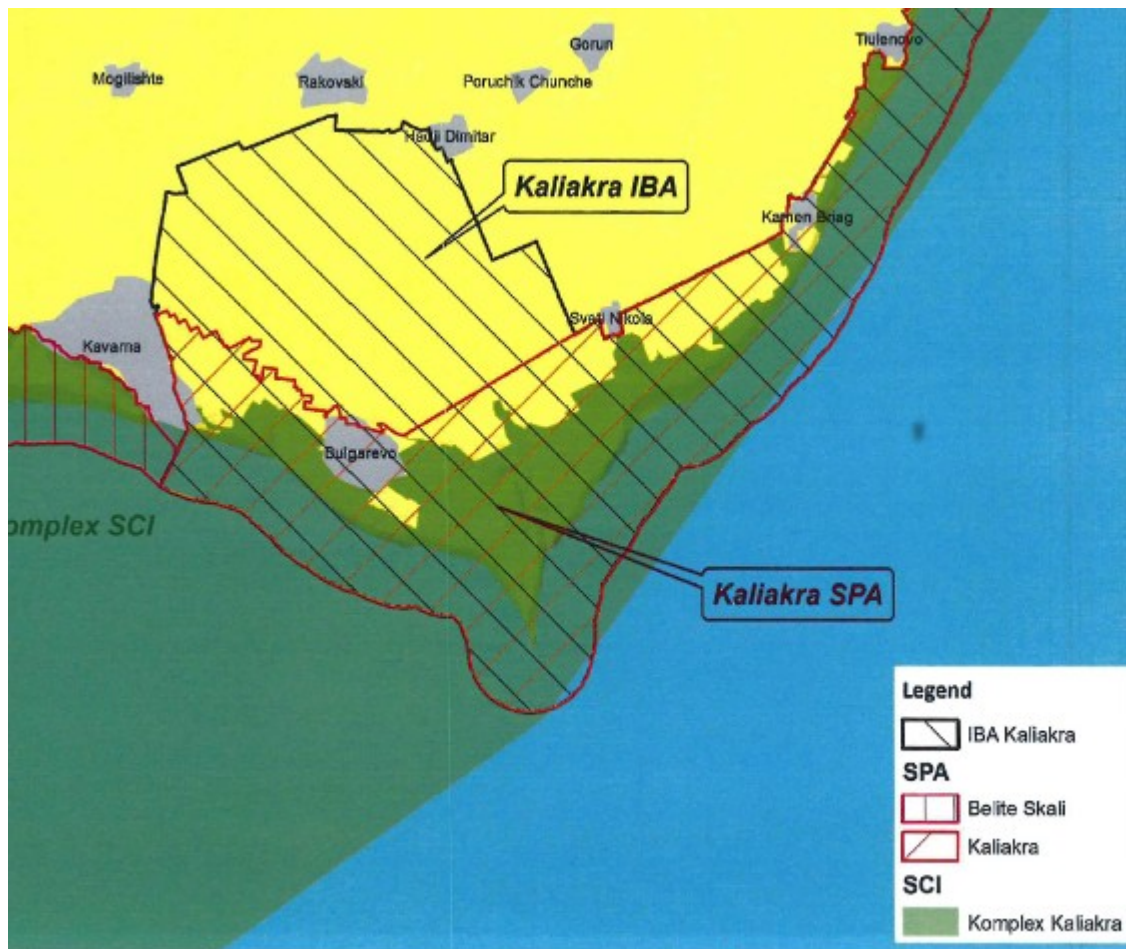


C-141/14 (European Commission v Republic of Bulgaria)

Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.



C-141/14 (European Commission v Republic of Bulgaria)



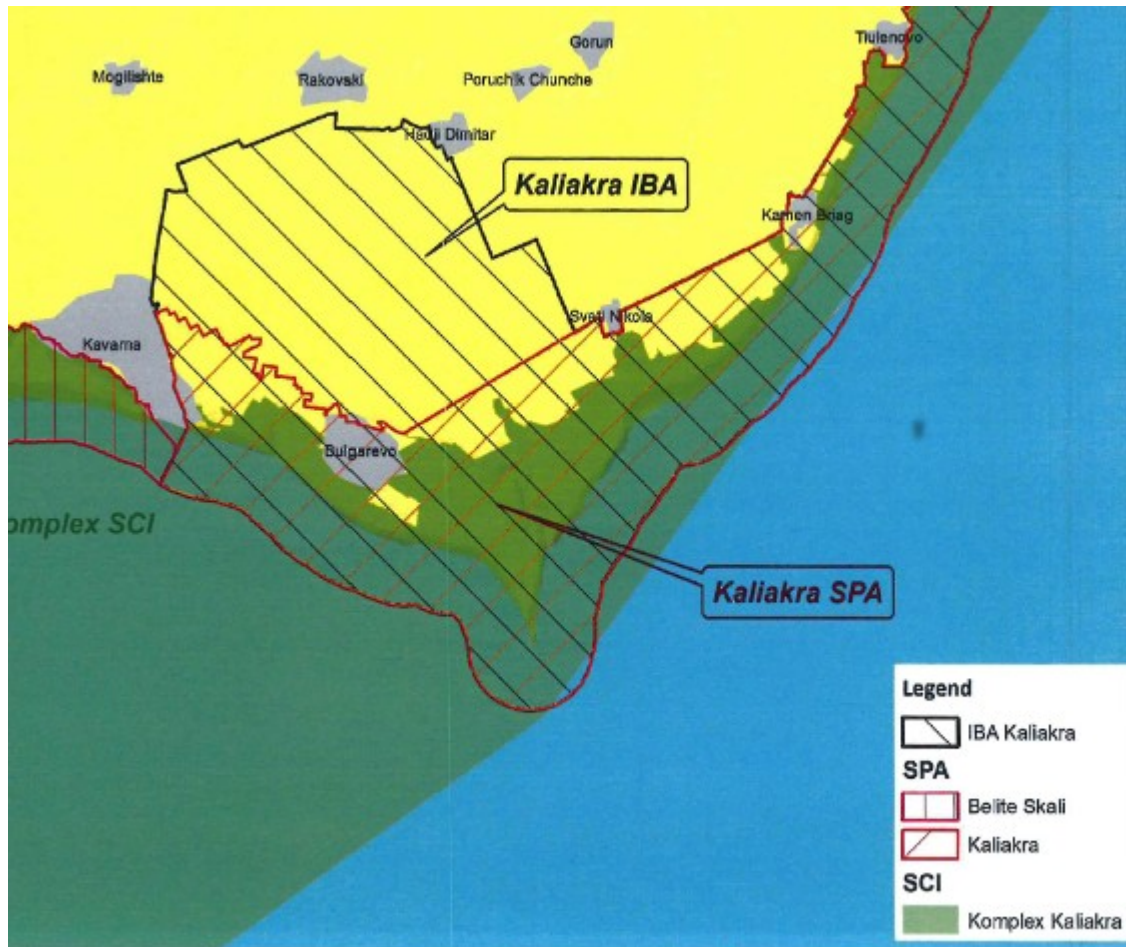


C-141/14 (European Commission v Republic of Bulgaria)

*Any plan or project not directly connected with or necessary to the management of the site but **likely to have a significant effect** thereon, either individually or in combination with other plans or projects, **shall be subject to appropriate assessment** of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*



C-141/14 (European Commission v Republic of Bulgaria)





C-243/15 (Lesoochrannárske zoskupenie VLK)

*It would be incompatible with the binding effect attributed to a directive by Article 288 TFEU to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned. The effectiveness of Directive 92/43 and its aim, which is recalled in the previous paragraph of the present judgment, **require that individuals be able to rely on it in legal proceedings, and that the national courts be able to take that directive into consideration as an element of EU law in order, inter alia, to review whether a national authority which has granted an authorisation relating to a plan or project has complied with its obligations under Article 6(3) of the directive, recalled in paragraph 42 of the present judgment, and has thus kept within the limits of the discretion granted to the competent national authorities by that provision.***



What is the European Union?

EU as an actor of International law:

- International Organization (with legal personality) of regional integration

EU law as a (self-contained) system of International Law:

- concessions of sovereign powers by Member States through the international treaties
- Set of independent rules
- Institutions
- Independent system of adjudication

The Union as a “*sui generis*” actor of international law:

- intergovernmental and supranational features
- Similarities with federal State (i.e.: division of competences)
- A political internal and external dimension



What is EU law?

- Set of principles and rules that regulate the relationship among the Member States of the European Union
- It derives from:
 - international treaties: founding treaties of the 3 communities + following treaties and amendments (primary law)
 - legal acts of the EU institutions (secondary law)

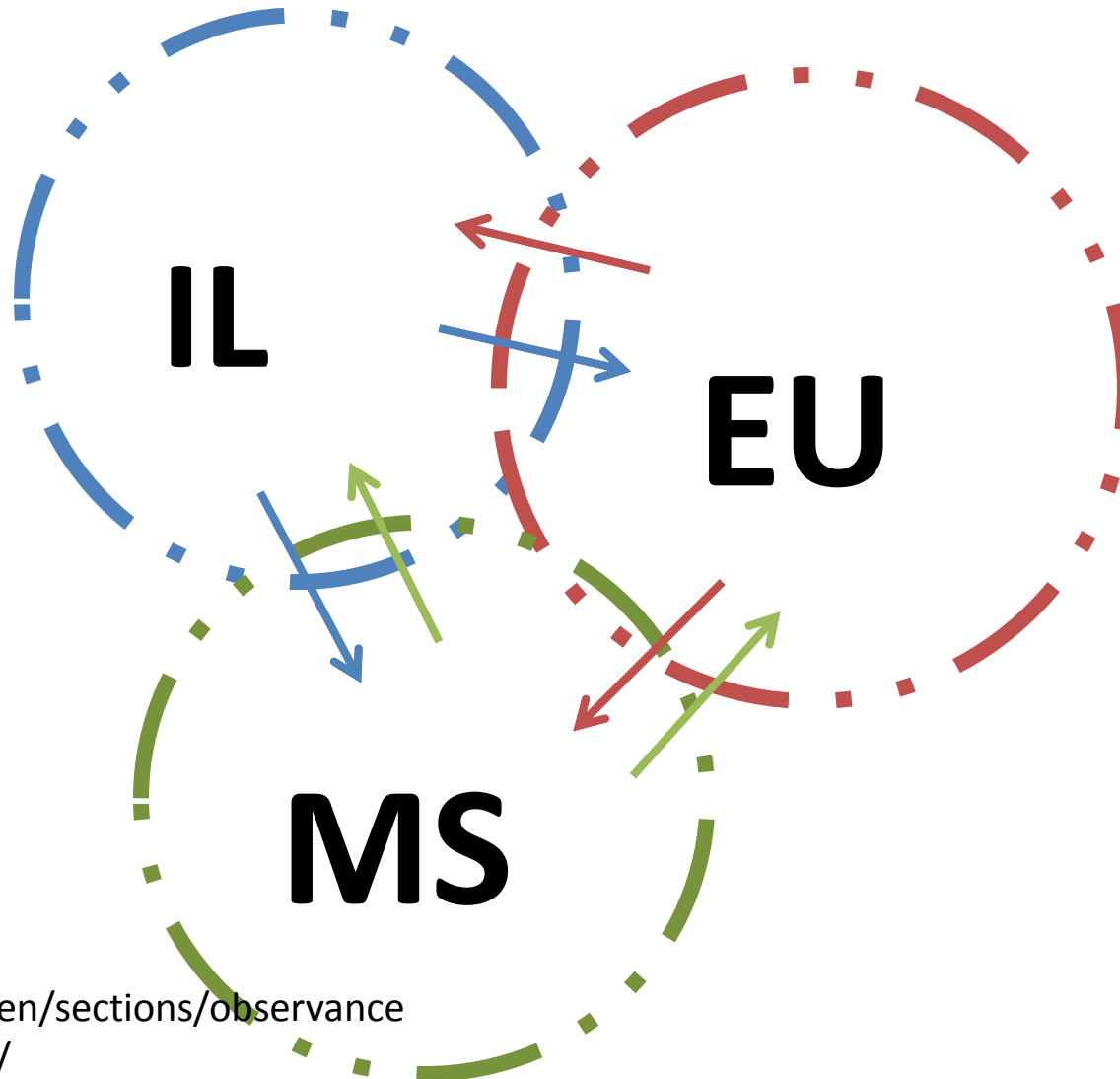
<http://eur-lex.europa.eu/>

<http://curia.europa.eu/>

<https://www.youtube.com/watch?v=XgnXwrsMBUs>



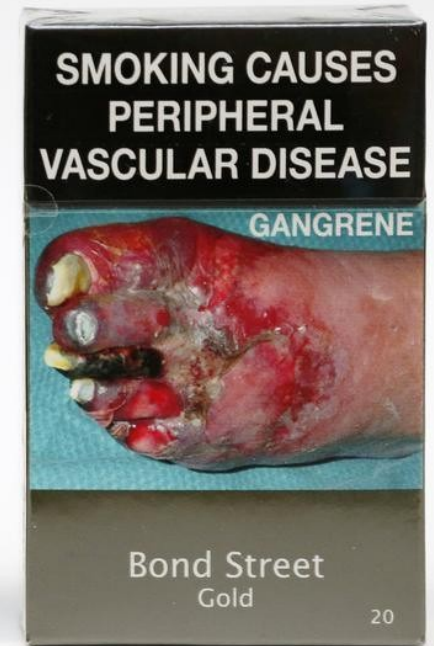
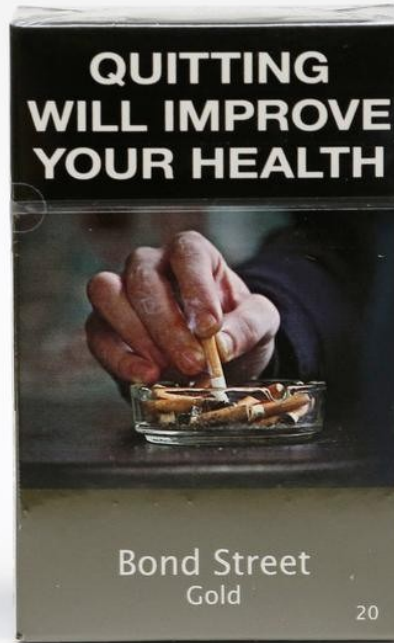
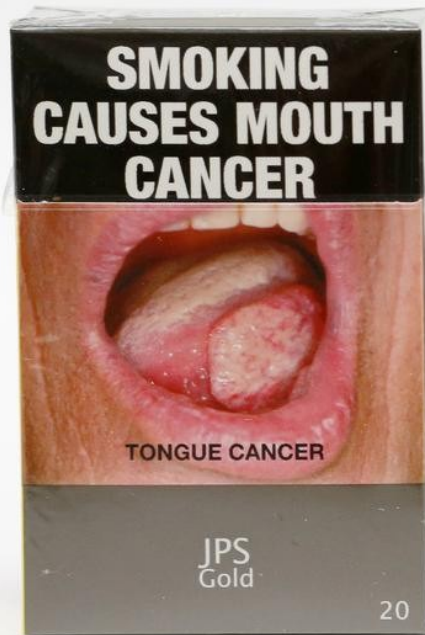
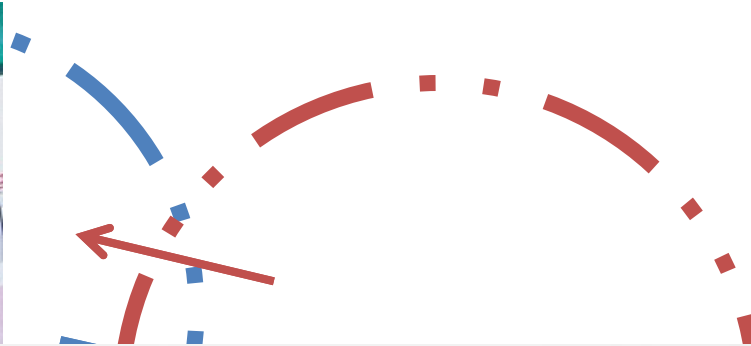
3 levels of policy and regulation



<http://www.un.org/en/sections/observances/international-days/>



3 levels of policy and regulation





Between the Law and the Policy

CETA, TTIP



<http://www.youtube.com/watch?v=T8gvH52dYAI>





EU and environmental protection

- European Union environmental legislation has developed over the last 30 years.
- Environmental policy was not regulated at the Community level in the beginning, the Treaty of Rome does not contain regulations regarding this.
- In the beginning, economic integration was the focus.
- Awareness about environmental pollution began to develop because of:

Intensive economic growth

The fast growth of industrialization

Increasing energy consumption

These circumstances led to the regulation and protection of the environment at the community level.

<https://www.youtube.com/watch?v=uTEMFKKuKxE>



Phase 1: 1958 - 1972

- 1958 EEC Treaty
- No specific attention to development of environmental policy
- Minor measures (common market based – dangerous chemicals, motor vehicles, detergents)



Phase 2: 1972 - 1987

- European Council Summit in 1972: Heads of State and Government decided that a Community environmental policy was necessary
- The basis of the environmental policy was established in the First Environmental Action Program (1973). Basic goals, principles of environmental law, and activities regarding certain fields of the environment.
- The main goal was the efficient operation of the Community and the Common Market – but extensive interpretation of economic expansion.
- Major role of the Court of Justice.



Phase 3

- **1987 Single European Act**

Independent title of environment was accepted

- **1993 Treaty on the European Union (Maastricht)**

Protection of the environment became part of the internal common policy. The scope of environmental policy was enlarged and supplemented it with new objectives.

- **1997 Treaty of Amsterdam**

„Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.”



Phase 4 – Lisbon and further

- 2009: Treaty of Lisbon
 - the 3 pillars structure disappears
 - TUE + TFUE (former TEC) + Nice into a single Treaty
 - Strengthened role of the EU Parliament
 - Broader Union's competences
- Birth of the European External Action Service (EEAS)



Phase 4 – Lisbon and further

- THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION
TITLE XX. ENVIRONMENT

Art. 191 TFEU:

- (1) Community policy on the environment shall contribute to pursuit of the following objectives:
 - preserving, protecting and improving the quality of the environment;
 - protecting human health;
 - prudent and rational utilization of natural resources;
 - promoting measures at international level to deal with regional or worldwide environmental problems.



Phase 4 – Lisbon and further

- (2) Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of other Community policies.



Phase 4 – Lisbon and further

- (3) In preparing its policy on the environment, the Community **shall take account** of:
 - - available scientific and technical data;
 - - environmental conditions in the various regions of the Community;
 - - the potential benefits and costs of action or lack of action;
 - - the economic and social development of the Community as a whole and the balanced development of its regions.
- (4) Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organizations.



Environmental action programme

- **Define the framework** of the EU environmental policy.
- The action programmes **set up the challenges and priorities for a given period** and create a frame for EU measures on the environment
- These include legislation of common policy.
- “The action programmes are political declarations of intent which take all the measures planned for a certain period, place them in an overall context, set priorities and, if necessary, introduce or explain changes in due course. They do not constitute a legal basis for Community environment measures.” Ludwig Krämer



The First Action Programme (1973-1977)

- emphasised the need for a comprehensive assessment of the impacts of other policies, in an effort to avoid damaging activities.
- already contained, in an embryonic form, many of the later ideas behind "sustainable development".
- proposed a gradual approach to defining environmental quality objectives
- At the end of this process a definition of product and environmental quality norms was put forward.



The Second Action Programme (1977-1981)

This programme wanted to ensure the continuousness of the projects started under the first action programme.

- Objectives:
 - Priority of the *protection of water, air and noise*
 - Rational use of *land, environment and natural resources*



First period – limited success

The evaluation of the practical success of this first period of environmental policy making is, in general, relatively critical. Initial enthusiasm declined considerably during the periods of economic recession (1975 - 1978, 1981 - 1983). Nevertheless a number of framework directives, especially for water and waste, were adopted during this period.



First period – limited success

Principles introduced:

Prevention is better than cure

Subsidiary principle - action at appropriate level

Environmental impacts to be accounted at earliest possible stage

Avoidance of significant damage to ecological balance

Improvement of scientific knowledge

Polluter pays principle

Activities in one member state should not cause deterioration in another, interests of developing countries

Promotion of protection through international organisations



The Third Action Program (1982-1986)

- Recognized the environmental policy as a *separate* policy:
 - **Change in emphasis from pollution control to pollution prevention**
 - **Land use planning** (a tradition of strategic environmental planning from the Netherlands)
 - **Integration of environment into other EC policies**
 - **Emissions control policy**
 - During the 1980s, to avoid distortions in competition, German industries and the government successfully lobbied for a harmonised European emissions control policy, a culture of participatory environmental policies came from many of the smaller countries, a focus on setting environmental quality objectives from the UK and more recently the reform of chemicals policies in Scandinavian countries



The Fourth Action Program (1987 - 1992)

Emphasizes the analysis of benefits and cost, the *polluter pays* principle, responsibility in the environmental field

- Effective implementation of existing Community legislation
- Regulation of all environmental impacts of 'substances' and 'sources' of pollution
- Increased public access to and dissemination of information
- Job creation



The Fifth Action Program (1993-2000)

- **Sustainable development**
- **Reference to the sectoral approach**
- **The emphasis on new instruments.**
- **The new consensus-oriented approach taking into account the crucial role of non-governmental protagonists and local/regional authorities to represent the general interest of the environment.**
- **The setting of medium and long-term objectives**



The Sixth Action Program (2001 - 2010):

Four priority areas :

- emphasizing climate change as an outstanding challenge
- protecting, conserving, restoring and developing the functioning of natural systems, natural habitats, wild flora and fauna
- contributing to a high level of quality of life and social well being for citizens
- better resource efficiency and resource and waste management



A review in 2007

Underlines that the EU is still not on the way to sustainable development

It states that the domestic legislation of the MSs is influenced by the EU law at least to an extent of 80 %

The major conclusion is that there is an urgent need for better integration, and environmental policy must be revised in 2012

7th EAP



2 more priority objectives focus on:

- Enhancing the sustainability of EU cities
- Improving the EU's effectiveness in addressing regional and global challenges related to environment and climate change

7th EAP



- EU Environmental policy is linked to the EU budget:
- Green funding, 5 % - 20 % GC
- Private investors
- *Europe 2020 - the EU's growth strategy*
- *to become a smart, sustainable and inclusive economy. These three mutually reinforcing priorities should help the EU and the Member States deliver high levels of employment, productivity and social cohesion.*
- 2015 Action Plan on circular economy



EU environmental policy and law

limits of law as a tool for harmonizing environmental policy in the EU

- Formal law is limited in its capacity to harmonize environmental policy, e.g. of the different Member States in the EU

political reasons:

- difficulties of negotiating compromises that still have the capacity to harmonize, different cultures of public administration, different philosophies of environmental protection

● *legal reasons:*

different legal systems (common law, civil law), different legal cultures (discretion vs. binding rules)

sociological reasons:

- contrast 'law in the books' with 'law in action'



EU environmental policy and law

- Harmonization, in terms of uniformity of environmental laws, is no longer a key aim of the European Commission in the field of environmental policy
- But a ‘unity in diversity’ approach is flawed because it can mask severe implementation deficits of EU environmental law in some Member States and it glosses over the continuing political tensions between EU supranational governance and the Member States’ wish to retain sovereignty over their environmental policies.

What is the relationship between environmental policy and environmental law?

- transmission belt
- broken chain, complex interactions
- sidelining law

Treaties – a summary of the major provisions

Before 1986 (Treaty of Rome)	Single European Act (1986)	Maastricht Treaty (Treaty of the Union - 1992)	Amsterdam Treaty (1999)	Lisbon Treaty (2009)
Art. 100 Harmonization (internal market)	→ Art 100a Harmonization + safeguard clause	→ Art 100a Harmonization + safeguard clause	→ Art 95 Harmonization + safeguard clause	→ Art 114 Harmonization + safeguard clause
Art. 235 Objectives of the Community	Art. 235 (not in use any longer!)	Art. 235 (not in use any longer!)	Art. 308 (not in use any longer!)	Art.352 (not in use any longer!)
-	Art. 130r - Objectives - Principles - Grounds - Int. coop.	→ Art. 130r - Objectives - Principles - Grounds - Int. coop.	→ Art. 174 - Objectives - Principles - Grounds - Int. coop.	→ Art. 191 - Objectives - Principles - Grounds - Int. coop.
-	Art. 130s Legal basis and procedure	→ Art. 130s Legal basis and procedure	→ Art. 175 Legal basis and procedure	→ Art. 192 Legal basis and procedure
-	Art. 130t Minimum stringency	→ Art. 130t Minimum stringency	→ Art. 176 Minimum stringency	→ Art. 193 Minimum stringency



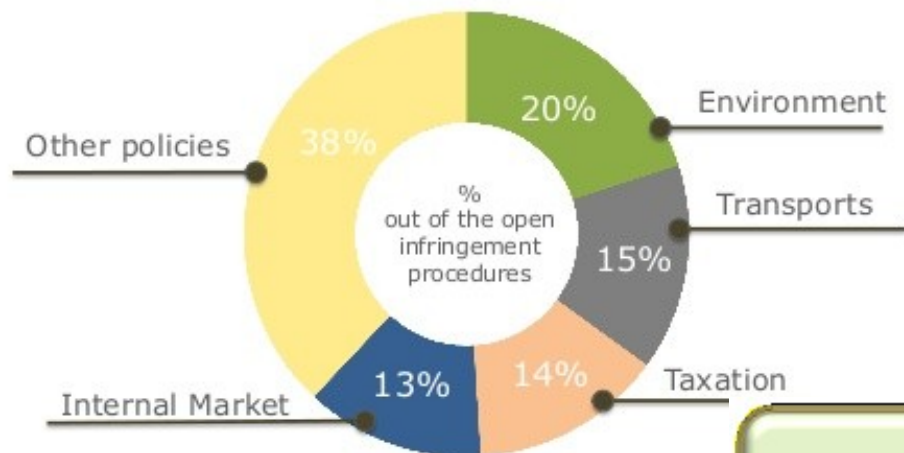
Legal base

- Article 3 TEU Objectives
- New Article 4(2)(e) Shared competence
- New Article 13 TFEU Animal Welfare
- Article 191(2) – New - Climate change
- New Title XXI Energy
- Article 194 TFEU

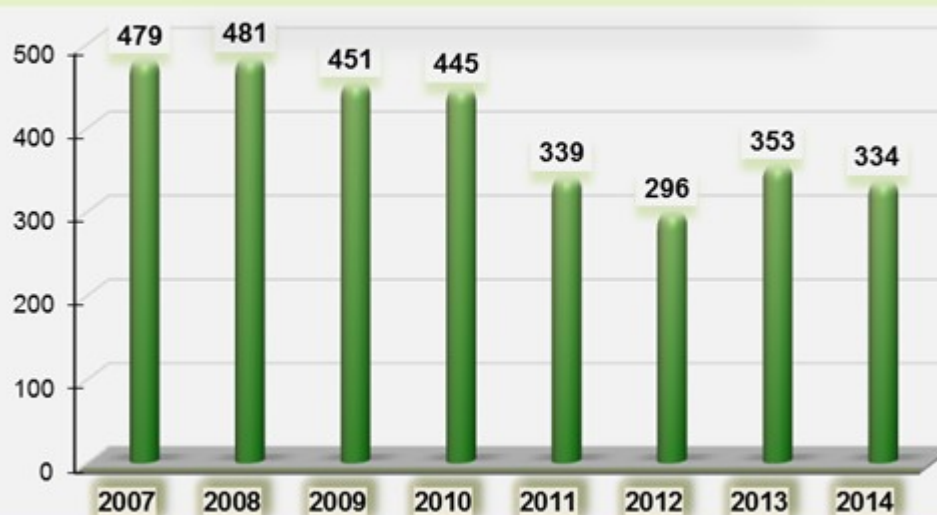
The European Commission Report (2012)

1,343 infringement procedures were open at the end of **2012** compared to 1,775 cases in 2011. Since 2009, there has been an **annual decrease** in the number of open infringement procedures.

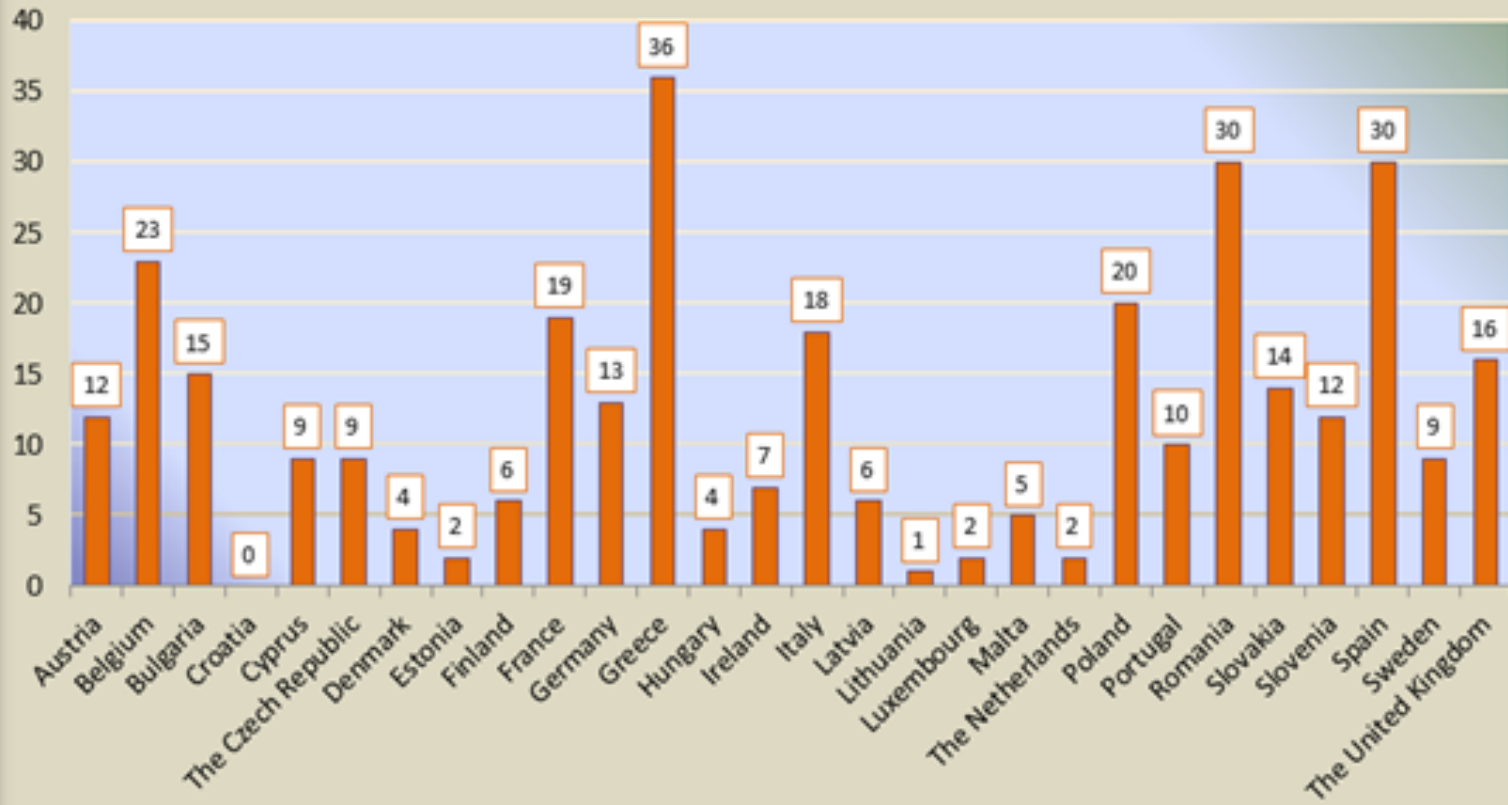
The policy areas with the most infringements in 2012 were:



Open DG ENV Infringements (end of each year)



Infringements in 2014



Total: 334

To be continued...

Thank you for your attention 😊