



EEL News Service

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Case Law

Difference between 'delegated' and 'implementing' acts

ECJ Case C-427/12 *European Commission v European Parliament and Council of the European Union*, 18 March 2014

This case deals with the differences between a 'delegated act' (Article 290 TFEU) and an 'implementing act' (Articles 291(2) TFEU). It concerns the European Commission's (EC) challenge of Article 80 [Biocides Regulation](#), asking the EC to provide for an implementing act instead of a delegated act on fees payable to the European Chemicals Agency (ECHA).

First, the Court observed that there is no definition of an 'implementing act' in Article 291(2) TFEU. According to the Court, it is apparent from the reading of the provision that it is only where uniform conditions for implementing legally binding acts are needed that those acts intend to confer implementing powers on the Commission. It also stated that the concept of 'implementing act' in Article 291(2) must be assessed in relation to the concept of a 'delegated act' (Article 290 TFEU). When the EP and Council confer a delegated power, the Commission is to adopt rules which "supplement or amend certain non-essential elements of the act"; "[t]he objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts" (Article 290(1) TFEU). By contrast, when the EU legislature confers an implementing power on the basis of Art 291(2) TFEU, the Commission is to provide further detail in relation to the content of the legislative act, in order to ensure that it is implemented under uniform conditions in all member states.

The ECJ emphasized that the EU legislature has discretion when deciding to use delegated power or implementing power and therefore judicial review is limited to "manifest errors", and thus an assessment of whether the EU legislature reasonably could have taken the view that (i) in order to implement the legal framework which laid down the system of fees only the addition of further detail was needed and (ii) that the provisions of the regulation related to that system require uniform conditions for implementation.

The Court concludes that the EU legislature could indeed reasonably take the view that Article 80(1) of the Biocides Regulation No 528/2012 confers power to the Commission, not to supplement certain non-essential elements of that legislative act, but to provide further detail in relation to the normative content of the regulation, in accordance with Article 291(2) TFEU. It also stated that since the system of fees referred to in Article 80(1) of the Regulation relates to fees payable to an EU agency, the conferral of an implementing power on the EC may be considered reasonable for the purposes of ensuring uniform conditions for implementation of that system within the EU. The Commission's action was therefore dismissed.

See also:

[AG Opinion](#), 19 December 2013

EU labyrinth by Daniel Guéguen, [Court of Justice keeps low profile on secondary legislation](#), 21 March 2014

Landowner's right to initiate review under Habitats Directive

ECJ Case C-301/12 *Cascina Tre Pini SS v Ministero dell'Ambiente e della Tutela del Territorio e del Mare*, 3 April 2014

The case concerned a request for a preliminary ruling by an Italian court on whether Articles 4(1), 9 and 11 of the [Habitats Directive](#) should be interpreted as meaning that the competent authorities of the member states are required to propose to the Commission the declassification of a site on the list of Sites of Community Importance ('SCI'), where those authorities have received a request from the owner of land included in that site, alleging an environmental degradation of the site. In the national proceedings, the owner of the Cascina Tre Pini area claims that an increase in air traffic at the Milan-Malpensa airport has damaged and deteriorated the environment, and requested that the review of the area's SCI status.

The Court noted that as a rule, restriction to property rights is justified by the objectives of protecting the environment laid down in the Habitats directive but, where those qualities definitely disappear, continuing to restrict the use of that site might be an infringement of the right to property. Not all degradation of a site on the list of SCIs justifies its declassification, however. According to Articles 4(5) and 6(2) Habitats Directive member states have an obligation to protect SCIs by adopting measures to avoid the deterioration of natural habitats. The Court stated that a member state's failure to protect a particular site does not necessarily justify the declassification of that site. On the contrary, it is for that state to take the necessary measures to protect the site.

An allegation of environmental degradation of an SCI made by a concerned property owner is not in itself enough for the adaptation of the list of SCIs, the Court emphasised. It reiterated that it is essential that derogation should make the site "irretrievably unsuitable" to ensure the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network, so that the site can "definitely no longer contribute to the achievement of the objectives of the directive set out in Articles 2 and 3 thereof."

Interestingly enough, on the 16 April 2014, the European Commission in its monthly infringement package included a reasoned opinion requesting Italy to upgrade the protection of the Natura 2000 classified forest in the Cascina Tre Pini area.

See also:

Geert Van Calster, GAVC LAW (blog), [Declassification of habitat sites: ECJ confirms view of AG in Cascina Tre Pini](#), 7 April 2014

ENDS Europe [CJEU: Landowners can seek conservation review](#), 3 April 2014

[AG Opinion](#), 20 June 2013

European Commission [April infringement package](#), 16 April 2014

IPCC report on climate change mitigation

On 13 April 2014, IPCC Working Group III (WGIII) presented its report “Climate Change 2014: Mitigation of Climate Change”. It is the result of the work of 235 authors and 38 review editors from 57 countries. This third report forms the final working group contribution to the IPCC Fifth Assessment Report which is due in October 2014 together with a Synthesis report.

The previous interim reports have painted a bleak picture of the future and the effects of climate change. According to the new report, limiting the increase in global mean temperature to two degrees Celsius above pre-industrial levels is possible, but only if a radical shift from fossil fuels to low-carbon energy and major institutional and technological changes is realised. Greenhouse gas (GHG) emissions have to be reduced substantially by 40-70% compared with 2010 by mid-century, and to near-zero by the end of this century. Mitigation may also require removing CO₂ from the atmosphere by using Carbon capture storage (CCS) and bioenergy with carbon capture and storage (BECCS).

The report shows that global emissions of greenhouse gases (GHG) have risen to unprecedented levels despite a growing number of policies to reduce climate change. Emissions grew more quickly between 2000 and 2010 than in each of the three previous decades. According to the report, estimates of the economic costs of mitigation vary widely. In business-as-usual scenarios, consumption grows by 1.6 to 3 percent per year. Ambitious mitigation would reduce this growth by around 0.06 percentage points a year. However, the underlying estimates do not take into account economic benefits of reduced climate change. Stabilizing greenhouse gas concentrations in the atmosphere requires emissions reductions from energy production and use, transport, buildings, industry, land use, and human settlements. The report also emphasizes the need for energy efficiency.

Commenting on the report Connie Hedegaard, EU Commissioner for Climate Action, pointed out the need for first movers to set a plan into motion, and said that the EU will adopt an ambitious 2030 target later this year.

See also:

IPCC [press release](#), 13 April 2014

IPCC WGIII [Summary for Policymakers](#), 13 April 2014

IPCC WGIII [Final Draft](#), 15 April 2014

European Commission [reaction](#), 14 April 2014

ENDS Europe [Double low-carbon energy spend by 2030 – IPCC](#), 14 April 2014

EEL News Service [Issue 03/2014](#) on the WGII report

EC approves last international credit entitlement (ICE) tables

On 24 April 2014, the European Commission (EC) approved the fourth and final group of ICE tables. This means that ICE tables now have been approved for all 28 EU member states. The ICE tables contain entitlements for each installation and aircraft operator calculated by Member States in accordance with the [EU ETS directive](#) (2003/87/EC) and adopted in accordance with the Commission

[regulation](#) (EU) No 1123/2013 on determining international credit entitlements pursuant to the directive. The tables will be uploaded before the end of April, allowing for the exchange of international credits in time to meet the compliance requirements for 2013.

See also:

European Commission [press release](#), 24 April 2014

European Commission [international climate market](#)

Energy

Belgium and Finland risk fines of energy efficiency in buildings

The European Commission (EC) has referred Finland and Bulgaria to the ECJ for failure to fully transpose the [directive on energy performance of buildings](#) (EPBD). The two member states face daily fines of about €42,000 and €19,178 respectively until the EPBD is fully transposed. According to the Commission, the fines requested reflect the duration and gravity of the infringements. Under the directive, member states are obliged to establish and apply minimum energy performance requirements for all buildings, ensure the certification of buildings' energy performance and require the regular inspection of heating and air conditioning systems. It also requires member states to ensure that by 2021 all new buildings are nearly zero-energy buildings. The directive had to be transposed into national law by 9 July 2012, but less than half of the member states managed to meet the deadline. Many member states have received warnings from the Commission which state that the present action might be complemented by further referrals to the Court in the coming months.

See also:

European Commission [press release](#), 16 April 2014

European Commission [April infringement package](#), 16 April 2014

EC publishes new state aid rules on renewables

On 9 April 2014, the European Commission (EC) published new state aid [guidelines](#) for energy production, infrastructure and support to energy-intensive industries. The guidelines set the criteria according to which the EC will approve new subsidy schemes. They will apply from July 2014 until the end of 2020. Existing support schemes will not be affected by the new rules. According to the guidelines, new support schemes will only be permitted for a maximum of 10 years and member states should be using feed-in premiums or tradable certificates by 2017, following a pilot phase starting next year. Installations smaller than 3 MW for wind or smaller than 500 kW for other sources will be exempted from the rules and can still be supported by feed-in tariffs. More generally, competitive bidding processes will become the rule, obliging power generators to sell electricity on the market. The threshold by which state aid can be granted without bidding remains at 6MW for wind or 1MW for other technologies.

According to the Competition Commissioner Joaquín Almunia, the renewables market are mature enough to be entering the open market. The aim of the guidelines is to integrate renewables into the internal market by promoting a “gradual move to market support”. The guidelines also allow member states to relieve companies that are particularly exposed to international competition from charges levied for the support of renewables. Certain energy intensive sectors defined for the whole of EU will also be allowed reduction. Notably these include high-pollutants such as the chemicals, metals, paper, and ceramics sectors. The guidelines also include new provisions on aid to energy infrastructure and generation capacity to strengthen the internal energy market and ensure security of supply. According to the EC, the guidelines will support member states in reaching their 2020 climate targets, while ensuring cost-efficiency and addressing the market distortions that could be a result from subsidies granted to renewable energy sources. According to the Commission’s press release, several categories of environmental and energy aid measures will be included in the upcoming [revision](#) of the General Block Exemption Regulation.

The new guidelines have been criticised for discriminating against small-scale electricity generators, undermining commitment to renewable energy and even for breaching EU law. European Renewables Energies Federation (EREF) urges member states and the renewables sector to challenge the guidelines in court, claiming that they contradict the [Renewable Energy Directive](#) (RED) and are in violation of EU treaty principles. According to EREF, the EC exceeds its powers in adopting the guidelines as the rules disregard member state’s sovereign right to define their energy mix and energy market design, laid down notably in Article 194(2) TFEU.

Luxemburg Green MEP Claude Turmes daims that exempting big energy consuming industries from transition towards cleaner energy breaches the polluter pays principle, and further states that the EC has given away to pressure from Business Europe, a trade association representing the largest corporations in Europe and by the pan-Euro association of electricity producers, Eurelectric.

See also:

European Commission [press release](#), 9 April 2014

Vice-president Almunia’s [speech](#), 9 April 2014

European Commission [Guidelines on State aid for environmental protection and energy 2014-2020](#), 9 April 2014

ENDS Europe [EC sets new state aid rules for renewables](#), 9 April 2014

EurActive [Commission pushes renewable energy into the free market](#), 10 April 2014

Euobserver [Alarm over EU proposal to cut loose renewable energy firms](#), 9 April 2014

EuropeanVoice [Commission unveils overhaul of renewable energy subsidies](#), 9 April 2014

Committee of the Regions [press release](#), 4 April 2014

European Renewables Energies Federation (EREF) [press declaration](#), 9 April 2014

European Photovoltaic Industry Association (EPIA) [press release](#), 9 April 2014

New UN initiative promoting sustainable energy

The United Nations (UN) on 9 April 2014 launched the ‘Decade of Sustainable Energy for All’ (2014-2024), an initiative aimed at promoting renewable energy and efficiency worldwide. The main objectives of the initiative are to ensure universal access to modern energy services, to double the global rate of improvement in energy efficiency and the share of renewable energy globally. Kandeh

Yumkella, the Secretary-General's Special Representative on Sustainable Energy for All Initiative, called on the private sector to help reach the goals by 2030 through innovation and investment. The 'decade' is accompanied by an annual forum that will be held in cooperation with the World Bank and other key partners, starting 4-6 June 2014. It will gather representatives from government, private sector, civil society, and international organizations to assess progress on sustainable energy. The forum will also be a place for the industry to showcase innovation and is meant to add momentum towards the UN climate change summit in September 2014 and contribute to the ongoing discussion on how energy issues should be reflected in the development after the 2015 climate change conference in Paris. The initiative stresses the need to address energy poverty, reducing greenhouse gas emissions and handling climate change as a global challenge.

See also:

[UN press release](#), 9 April 2014

[Sustainable Energy for All](#)

Nature

Revised EIA rules enter into force

The [revised Environmental Impact Assessment \(EIA\) directive](#) will enter into force in May 2014 following its publication in the Official Journal. The member states will then have until 16 May 2017 to transpose the new rules into national law. This is the fourth time the directive, which originally entered into force in 1985, has been amended.

In order to address existing differences between EU countries, the revised rules include a more standard approach to screening process carried out by the national authorities to decide when an EIA is needed for Annex II projects. Projects listed in Annex I automatically require an EIA. A new Annex IIA sets out the information developers must provide for the screening process, and a clarification of the cumulative impact of a project which should include existing and/or approved projects.

Important additions to the EIA directive also include a requirement on member states to set penalties for non-compliance, post-development monitoring for significant project impacts and an extension of the topics considered by EIAs to include biodiversity, climate change and natural resources. Projects that are already undergoing screening or scoping in May 2017, or where an EIA report has already been submitted, will be subject to the existing rules.

It can be added that the directive does not make EIAs mandatory for shale gas projects using fracking, which was proposed by MEPs during the negotiations but blocked by a minority in the Parliament. The Commission's suggestion that national authorities should set the terms of reference for every EIA was not included in the final version either, leaving it up to the member states to decide whether the scoping process should be mandatory. EIAs shall, according to the directive, be carried out by "competent experts" and not by "accredited and technically competent experts" which had been suggested earlier.

See also:

ENDS Europe [MEPs and member states reach deal on EIA law](#), 20 December 2013

EP approves regulation on invasive alien species

On 16 April 2014 the European Parliament (EP) approved measures to stop invasive alien species (IAS) from getting into the EU. The European Commission (EC) proposed a [regulation](#) on invasive alien species in September 2013. In January 2014 the Parliament's Committee on the Environment voted on a number of changes to the proposal. After debate over institutional procedures MEPs and member state negotiators on 19 March reached an agreement which has now been approved by MEPs. The regulation will require EU member states to ascertain the routes of introduction and spread of invasive alien species and set up surveillance systems and action plans. Official checks at EU borders will also be stricter and management plans need to be drawn up for widespread IAS. According to the compromise text, the power to adopt acts in accordance with Article 290 TFEU will be delegated to the Commission. In respect of determining the invasive alien species, the EC must "follow its usual practice and carry out consultations with experts, including member states' experts, before adopting those delegated acts." In negotiations the Council agreed with MEPs call for an open-ended list of alien species "of Union concern" instead of a cap of 50 species. These IAS should not be introduced, transported, placed on the market, kept, bred, grown or released in the environment. Priority will be given to those that represent an emerging problem and that cause the most significant damage to the environment. MEPs also inserted provisions to handle IAS that are of concern for single member states, while those that are native to only part of the EU are to be handled by enhanced regional cooperation, facilitated by the Commission. The penalties for breaches of the legislation will have to be defined by member states. Despite the rules member states can, where authorized by the EC, grant specialized establishments permits to carry out certain commercial activities with IAS. The deal will have to be formally approved by the Council before coming into effect.

See also:

[Draft regulation](#) on the prevention and management of the introduction and spread of invasive alien species

European Parliament [press release](#), 16 April 2014

European Parliament [press release](#), 19 March 2014

ENDS Europe [Compromise reached on tackling invasive species](#), 21 March 2014

EP approves fisheries policy reform

The European Parliament (EP) on 16 April 2014, approved operating rules for European Maritime Fisheries Fund (EMFF) aid to help fishermen comply with the new Common Fisheries Policy (CFP). According to the EP press release, money will be earmarked for data collection, support for young fishermen to help starting up their business. The aid is expected to help the fishermen comply with the new rules by supporting investments in more selective fishing gear or equipment to facilitate handling, landing and storage of unwanted catches. EMFF aid will also be used to improve safety and working conditions, data collection and port infrastructure. The proposals still have to be formally

approved by the Council. The EMFF regulation is the last of three pieces of legislation in the now completed CFP reform package. The other two; the basic regulation for the CFP reform and the regulation on the common organisation of the markets in fishery and aquaculture products, are already in force.

See also:

European Parliament [press release](#), 16 April 2014

Water

Commission takes Austria to Court over failure to protect river

According to the European Commission (EC), Austria is failing to ensure adequate protection of the water quality of the Schwarze Sulm River in Steiermark. Austria's planned construction of a hydropower plant would risk causing serious deterioration of the in the quality of the river, which is one of the longest undisturbed rivers in the region. The regional authority has according to the EC failed to respect water quality requirements under the [Water Framework Directive](#) (2000/60/EC) when it authorised the hydropower project in 2007. In 2009 the Austrian Federal Ministry of Environment revoked the permit, but Austria's constitutional court dismissed the revocation on formal grounds in 2012. The permit which then came back into force cannot be challenged before a national court. In 2013 the Commission opened an infringement procedure against Austria on the grounds that the permit for the power plant is not in line with the requirements of the Water Framework Directive. Since the construction work on the plant has begun already, the EC is referring the case to ECJ on recommendation of Environment Commissioner Janez Potočnik.

See also:

European Commission [press release](#), 16 April 2014

EP takes Council to Court over legal basis for rules on radioactive substances

On 30 January 2014 the European Parliament (EP) brought an action against the Council for the annulment of [Council directive 2013/51/Euratom](#) of 22 October 2013 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption. The EP claims that that the Council made an error in the choice of legal basis and that the measures covered by the directive fall within the responsibility of the EU in the field of environment. According to the EP, the measures should therefore have been adopted on the basis of Article 192 TFEU, following the ordinary legislative procedure and not on the basis of Articles 31 and 32 EA. Further, the EP claims that the directive undermines legal certainty as the rules review and analysis duplicate those already in force under the [directive on quality of water intended for human consumption](#) and that the Council by adopting the directive infringed the principle of loyal cooperation between institutions, referred to in Article 13(2) TEU

See also:

Application Case C-48/14 [European Parliament v Council of the European Union](#), 30 January 2014

Waste

MEPs back rules on plastic bags reduction

In plenary on 16 April 2014, the European Parliament (EP) approved draft EU rules aimed at reducing plastic bag use and waste by including obligatory European reduction targets and a requirement that plastic bags come at a cost. In November 2013, the Commission adopted a proposal for a directive to reduce the consumption of lightweight plastic bags in the EU. The proposal amends the [Packaging and Packaging Waste directive](#) (94/62/EC). In accordance with requests made by the EP's Environmental Committee, the directive will include reduction targets for lightweight plastic bags which constitute the majority of plastic bags used in the EU. According to the proposed legislation member states will have to reduce the use of these plastic bags by at least 80% by 2019 compared to 2010 figures. MEPs recommended using taxes and levies, marketing restrictions or bans stop shops from giving out plastic bags for free. Very light plastic bags, used to wrap loose foods such as raw meat, fish and dairy products are exempted but should according to the rules by 2019 be replaced by carrier bags made of recycled paper or biodegradable and compostable bags. Requirements for compostable and biodegradable packaging should be amended according to MEPs.

Every year European supermarkets hand out about 100 billion plastic bags and on average, every European currently uses 198 single-use plastic bags per year, which represents about 1 bag per day for each household. The estimated time of use for these plastic bags is 20 minutes each. They take hundreds of years to degrade, and every year 8 billion of them end up in rivers and lakes or littering streets or the countryside. Those that are swept out to sea often end up being ingested by marine animals and birds leading to sometimes fatal consequences for whales, seals and gulls as well as many varieties of endangered turtles.

See also:

European Parliament [press release](#), 16 April 2014

European Parliament [draft resolution](#) on the proposal for a directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags, COM(2013)0761

ENDS Europe [MEP's plastic bag proposals win large backing](#), 16 April 2014

EurActiv [EU lawmakers vote to reduce plastic bag use](#), 16 April 2014

[Case 380/87 Cinsello Balsamo](#) where the ECJ found that an Italian town's ban on plastic bags was compatible with Community law.

Upcoming Events

The Hague Environmental Law Facility (HELFF) Lecture: "The European Aarhus Space: The Role of the Aarhus Convention Compliance Committee, the ECHR and the CJEU"

Speaker: Prof. Dr. Ellen Hey, Professor of International Law, Erasmus School of Law, Erasmus University and Visiting Professorial Fellow (2013-2015), School of Law, University of New South Wales.

Drawing on her extensive research in this matter, and her membership in the Aarhus Compliance Committee, Prof. Hey will discuss the manner in which this unique Convention through its own Compliance Committee and the case law of both the European Court of Human Rights and the Court of Justice of the European Union has shaped the manner in which Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters are regulated in Europe.

Date: Thursday 1 May 2014, 15.00

Venue: Institute for Environmental Security, Anna Paulownastraat 103, The Hague (please note that the next HELFF Lecture will take place at the Asser Institute again)

Registration: Attending the lecture is for free, but we kindly ask you to register by sending an e-mail to: shirleenchin@envirosecurity.org with your personal details (Title, Gender, Affiliation, Position, Country and Email Address).

The Hague Environmental Law Facility (HELFF) Lecture: "The Environmental Legacy of Sochi: Time to Take the Olympic Charter Seriously"

Speaker: Antoine Duval, Senior Researcher, T.M.C. Asser Instituut

Respondent: Ryan Gauthier, Researcher, Erasmus University Rotterdam

The Sochi Olympic Games have drawn to a close. Many facets of these Games have come under fire from critical commentators: the price tag, the climate, the human rights violations, the low attendance, the quality of the hotels, the list goes on... At the closing ceremony, however, IOC President Bach complimented Russia for "delivering on all that it promised." Considering environmental promises and the actual damage to the environment in Sochi, a different point of view on the environmental legacy of these Olympic Games, and options for improvements for future large sports events will be set out during this lecture. The respondent will also touch upon human rights aspects of organising and convening such events.

Date: Friday 16 May 2014, 15.00

Venue: T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, The Hague

Registration: Attending the lecture is for free, but we kindly ask you to register [here](#).

Contact: conferencemanager@asser.nl.

Summer Programme on International and European Environmental Law: Facing the Challenges?

As already indicated in the previous news services, the T.M.C. Asser Institute in cooperation with the Institute for Environmental Security is organizing a Summer Program on International and European Environmental Law: Facing the Challenges? More information, including a preliminary overview of the program, can now be found at the [Asser Instituut website](#).

Dates: 25-29 August 2014

Venue: T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, 2517 JN The Hague

2nd EELF Conference: “Environmental and Planning Law Aspects of Large Scale Projects”

The European Environmental Law Forum (EELF) together with Hasselt University and HUBrussel are proud to organise the second EELF Conference in Brussels.

The goal of the conference is to bring academics, members of EU and national/regional institutions, industry and environmental associations together and exchange views and debate on the central topic. We especially want to also offer an opportunity to young academics to present their research.

The conference focuses on all kinds of environmental and planning law aspects of large scale projects. These can be subdivided into the following four subthemes; the role of spatial and environmental planning, permitting and review procedures, critical sectoral regimes and horizontal measures.

The conference will consist of two days of presentations and discussions, and a third day with an excursion. We hereby welcome abstracts for presentations. Paper abstracts written in English and focused on the Conference theme are invited for submission. Abstracts of not more than 500 words should be sent to bernard.vanheusden@uhasselt.be by Thursday 1 May 2014 (together with a short biography of max. 150 words and an indication of the related subtheme(s)). More information on the conference (e.g. hotel accommodation, registration form, conference dinner etc.) will soon be available on the EELF [website](#) and the 2014 Conference webpage of Hasselt University.

Dates: 10-12 September 2014

Venue: Hogeschool-Universiteit Brussel (HUBrussel), Belgium

Colofon

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