



**Le juge administratif
et
le droit communautaire
de l'environnement**

**National administrative courts
And
Community
Environmental law**

Contribution

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**La réglementation des déchets et des installations polluantes
Regulations governing waste and polluting facilities**

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As far as I can see the attendance of lawyers in this conference is very high. I am not a lawyer, but a politician. So, it is possible that I say something, which is not prudent enough from the point of view of a lawyer. On the other hand, the advantage of being a politician is that I can speak quite frankly. Regarding the jurisdiction and the case law, I think that we experience many differences between the member states of the European Union. I am of the opinion that this is in line with the subsidiarity principle : member states should have the freedom to construct their own jurisdiction. Having said that, the jurisdiction should always be in line with the EU Treaty and the EU legislation. The EU legislators (Council and Parliament) can choose for a regulation, which means that it applies directly to alle member states. For directives however, there is room for member states with regards to the implementation. For the EU environmental legislation, member states have always the freedom to apply stricter rules. I have not a complete overview how the member states apply all the legislation in this respect. I am happy that this is the task of the European Commission. The European Commission is the supervisor of the EU treaty and controls the implementation and application of the legislation.

The task of the European Parliament is mainly to make the legislation. This is done in co-operation with the Council. An important aim in this respect is that we avoid a workload for lawyers. In other words, we should make legislation which is clear and can be implemented and enforced. The problem is that in many cases we divert from this clear line. In the legislative process we have tot take every comment into consideration. Above that, in many cases we have tot deal with conflicting interests. After negotiations, the compromise text gives room for interpretation and discussion. In my view this is the free space of the member states. On the other hand, the implementation in national legislation should comply with the principles and words of the EU legislation. Mainly in the Council we see that member states are giving more flexibility for the implementation, if we look to the text of common positions. In second reading the European Parliament many times tries to correct that flexibility. For example in the common position of the Council on the waste framework directive, which will be published the 18th of February, we see that the application of end of waste criteria is left over to the member states. This will be problematic, because for the whole European Union it is important that the status of a material, waste or product, should be the same.

According to the liability for pollution and the clean-up, this is left to the member states. This is in my opinion the direct result of the text of the IPPC directive. The Commission can control in the way that the pollution is ended and cleaned-up. How this pollution is stopped and cleaned-up is for the member states itself. In the IPPC directive there are much more things which are left to the member states. For example the reference documents on best available techniques (BAT) have the status of a guidance document. This means that these standards can be set as obligatory or not. The consequence is a loss of level playing field. Regarding national case law, the EU treaty and the EU-legislation is still leading, in so far this applies to the case itself. I have (very) little knowledge of national case law. I know, however, that the European Court of Justice has a lot of work. For example for waste issues many cases have passed. I think that it is a good thing that if national case law is not satisfactory for a part, that the European Court of Justice can make a final decision.

For definitions it is very important that these are the same in the whole European Union, and interpreted in the same way. This was also one of the reasons for the European Parliament, Commission and Council not to change the definition of waste. After many years of decisions of the European Court of Justice, we have a level of clarity and certainty. If the definition of waste

would change, this will lead to new court cases and new uncertainty. In many cases it is not easy to make good and clear legislation. We hope that this conference contributes to this aim. This will be better for the environment, but also for the functioning of the internal market.
