

Environmental Risk in Europe

Trends and Challenges

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- Background
- EU Environmental Liability Directive
- Member State Adoption
- Trends
- Case Studies
- Conclusion



Background

- Previous legislation
- Precautionary principle
- Aarhus Convention
- Polluter Pays Principle

E U Directive

- Background
- Scope
- Duties and Powers
- Enforcement
 - Preventative Measures
 - Remedial Measures
- Scope of Liability
- Costs
- Defences
- Sanctions
- Financial security

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Background

- Establishes a framework of environmental liability to prevent and remedy environmental damage
- Based on the 'polluter pays principle' and the prevention principle
- Adheres to the principle of sustainable development
- Imposes financial responsibilities on the operators of dangerous activities
- Creates an incentive to minimise the risks of environmental damage arising from operators activities

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Scope

Environmental Damage –

‘damage to protected species and natural habitats which has significant adverse effects ...’;

‘water damage ... that significantly adversely affects the ecological, chemical and/or quantitative status ...’;

‘land damage ... land contamination that creates a significant risk of human health being adversely affected ...’;

Operator – ‘any natural or legal, private or public person who operates or controls the occupational activity ... or to whom decisive economic power ... has been delegated, including the holder of a permit ... or the person registering or notifying an activity’.

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Duties/Powers

In the event of imminent threat of, or actual, environmental damage there is:-

- A duty on the Operator to notify the competent authority
- A duty on the Authority to act
- A power authorising competent authorities to act

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Enforcement

Preventative Measures

Where there is a imminent threat of environmental damage the operator shall carry out necessary 'preventative measures'

The authority may 'at any time':

Order the operator to provide information

Order the operator to carry out necessary preventative measures

Issue instructions concerning measures

Carry out the preventative measures itself

Enforcement

Remedial Measures

Operator – carry out ‘all practicable steps to immediately control, contain, remove or otherwise manage’ the contaminants

Authority has a duty to:-

- Order an operator to carry out remedial measures
- Establish the identity of the operator who caused the damage, assess the significance of the damage and determine the long term remedial measures
- State precise grounds for any decision
- Notify the operator of its decision, legal remedies and the time limits

Authority may :-

- Order the operator to provide supplementary information
- Order the operator to carry out emergency remedial measures
- Order the operator to assess the environmental damage
- Issue instructions concerning necessary remedial measures
- Carry out the measures itself

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Scope of Liability

The ELD 'shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators'



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Costs

The operator shall bear the costs for the preventive and remedial actions taken either by the operator or the authority except where the damage:

- Was caused by a third party and occurred despite appropriate safety measures
- Resulted from a compulsory order or instruction from a public authority not related to the operators activities

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Defences

None of the defences are defences to liability.

Member States must adopt the 2 mandatory defences but have discretion to adopt the 2 optional one.

Mandatory defences:

- Proof of damage caused by third party
- Compliance with mandatory order

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Sanctions

The EPL Directive does not establish penalties and these will be incorporated into national law of Member States during adoption.

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Financial Security

Encourage the development of financial security instruments

Member State adoption of the Directive

There is no formal report available

Still some Member States have not yet transposed it completely

- 1 June 2007 - 23 letters of formal notice
- 1 February 2008 - 16 reasoned opinions
- 25 June 2008 - 9 MS brought to the European Court of Justice

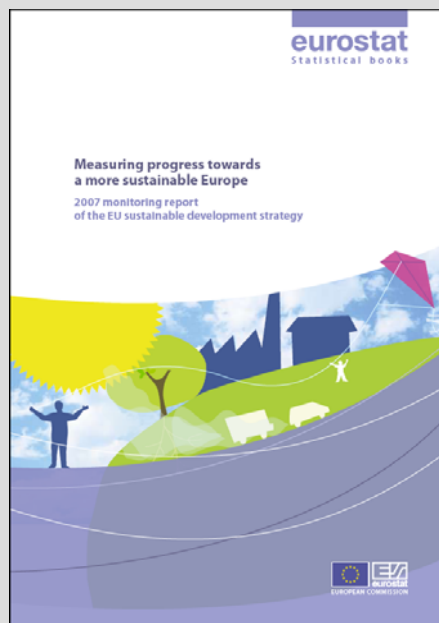
Currently condemned by European Court of Justice - France, Finland, Slovenia and Luxemburg

3 more judgements are awaited - Austria, Greece and the UK.

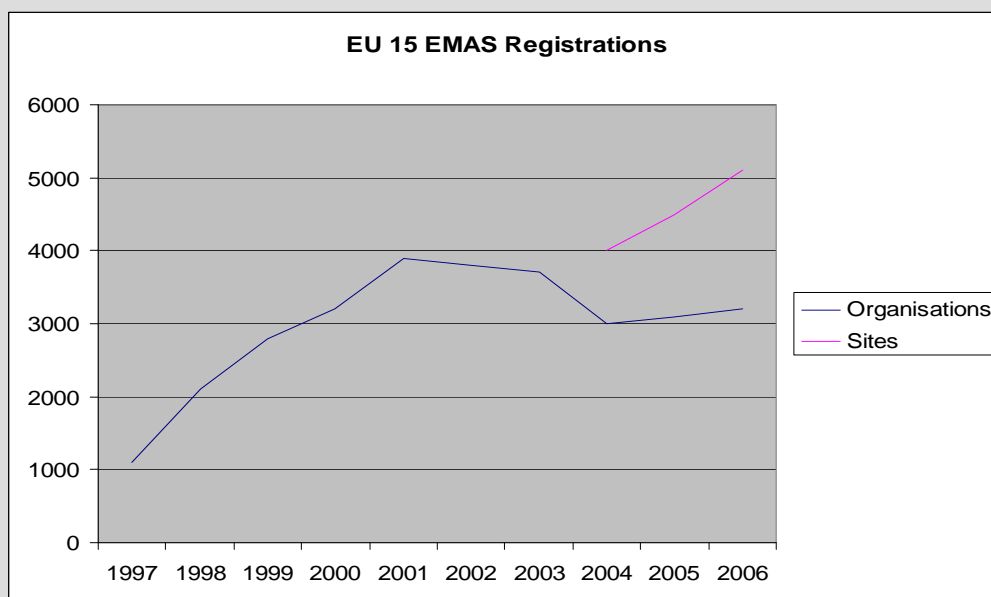
Penalties can only be imposed through a second Court judgement under Article 228 ECT.

Trends

- EMAS registrations
- Transpositions
- Infringements

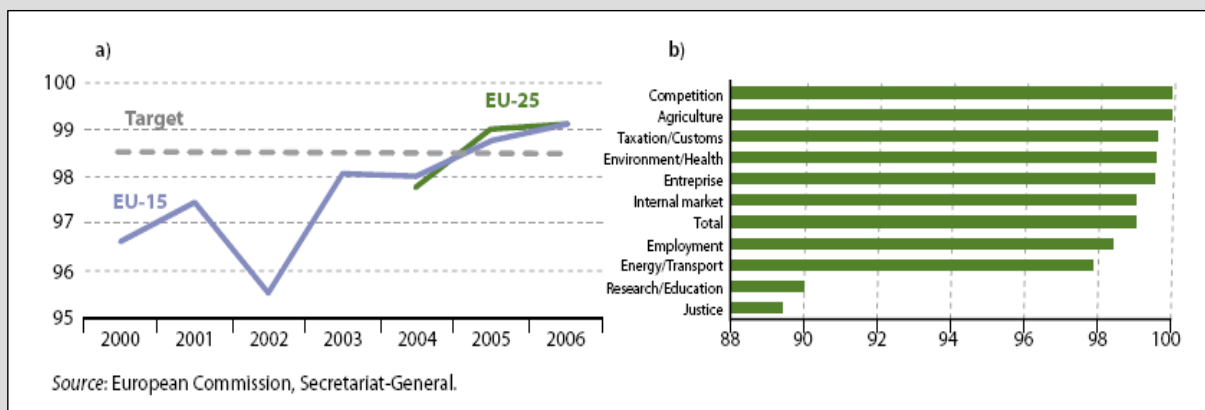


EU 15 EMAS Registrations

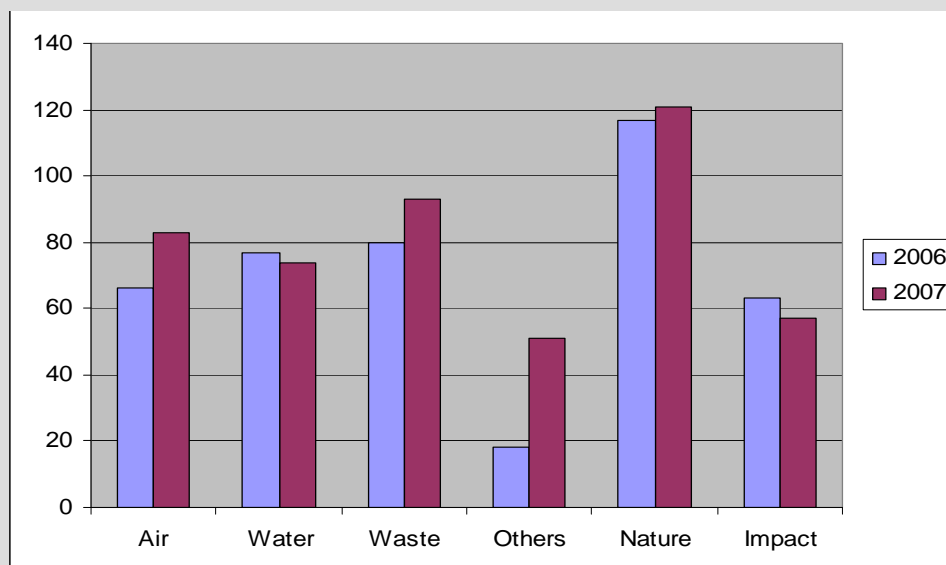


Source: EU Environment

Transposition of Community Law (%); (a) total and (b) by policy area in 2006 (EU-25)

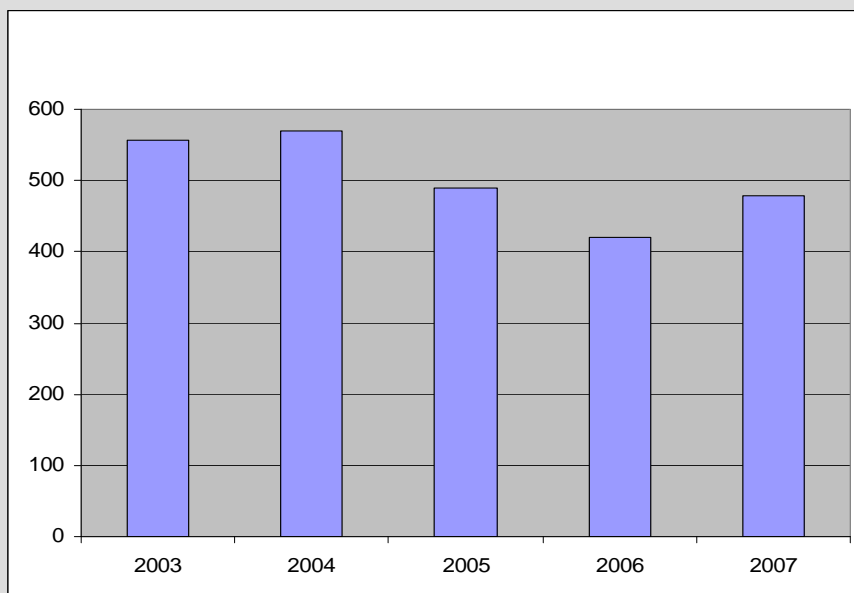


Infringements by category (2006 – 2007)



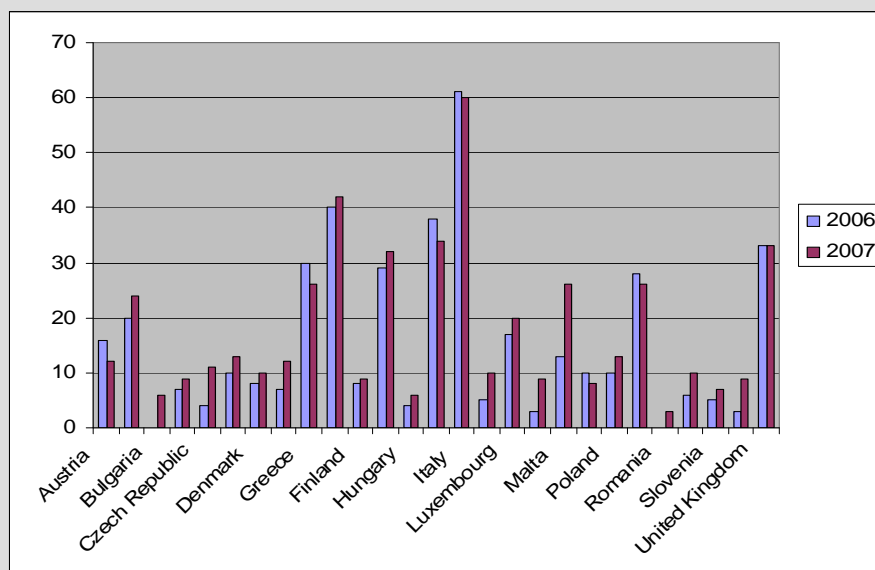
Source: EU Environment

Total number of infringements per year



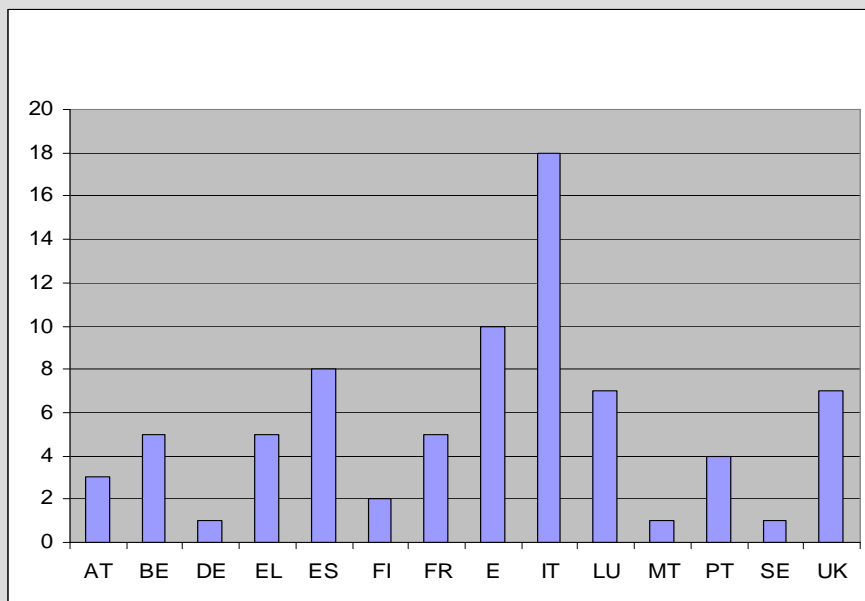
Source: EU Environment

Infringements in 2006 & 2007



Source: EU Environment

Article 228 cases (end 2007)



Source: EU Environment

Case Studies

Augustow bypass – Poland

Venice Lagoons

Madrid Airport

Special Areas of Conservation – Spain and Portugal

Italian Urban Waste Water Treatment

Air Quality


Water Pollution - Greece

Approach to Diffuse Pollution

Energy Performance of Buildings Directive

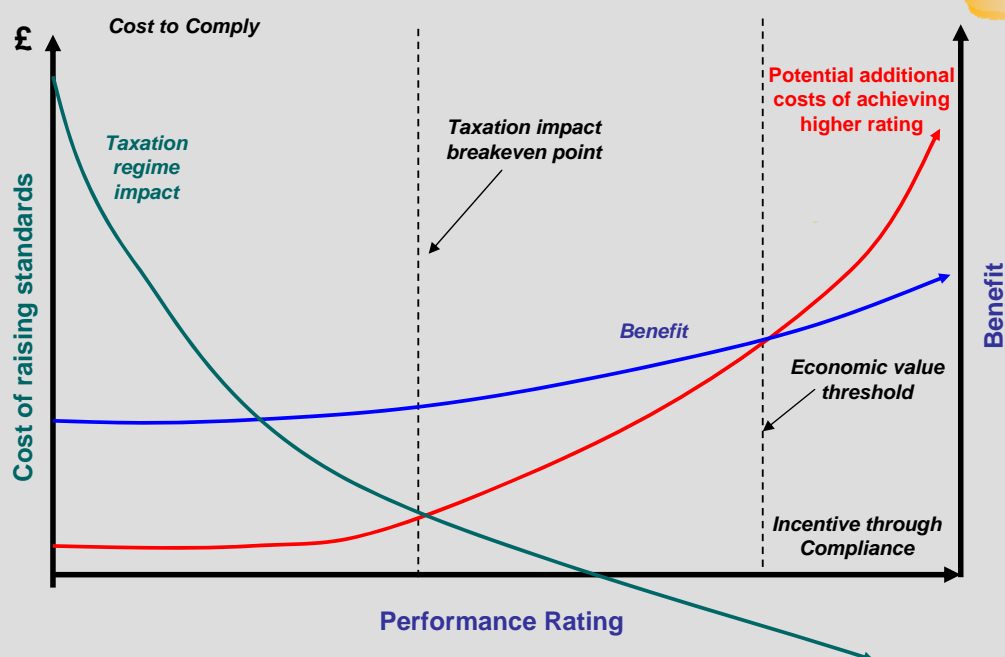
Building Energy Performance >		As built:	In use:
Certificate type	Policy	Asset Rating	Operational Rating
Building type	Whole building		
Very energy efficient			
A			
B			B
C			
D		D	
E			
F			
G			
Not energy efficient			
Approved rating method	UK National Standards 2004	Predicted	Actual
Operational rating method	UK Office 'Rated' Standards 2002	62	79
Utility usage	UK National Grid m³ of gas used per annum		
Occupancy level	Square metres useable area per person	14	14
Equipment load gain level	Watts per square metre useable area	15	100
Energy consumption input	Hours per annum	30	30
Healthcare performance ratings		A00000G	A00000G
Healthcare performance ratings (cooling, heating and pumps)		A00000G	A00000G
Lighting performance ratings		A00000G	A00000G
Management ratings for air conditioning performance only			A00000G
Financial Performance Quality			Not assessed
	Disposal		Not assessed
Further information can be found in the Energy Logbook			

GB 2004



Directors 2004/05

Approach to Diffuse Pollution



Conclusion

- Legislation is becoming more stringent
- Businesses will be expected to be pro-active
- Take advantage of financial mechanisms
- Insurance will be more important
- It's all about RISK

