
The Impact of EU Environmental Law on Waterways and Ports

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The problem for many commercial and other activities within the EU, whether on land or at sea, is understanding how the diverse body of EU law impacts upon what they do. Even more problematic are the pressures of legislation that is still in the pipeline. It is critically important that there are syntheses of these various legal obligations and an analysis of how they interact. This book is such a synthesis and is, therefore, a very valuable addition. In this case, it is the product of a study carried out for the Maritime Transport Co-ordination Platform of the European Commission (DG TREN).

The book has a very simple structure that is not only straightforward to read, but also allows easy reference. Following a brief introduction, it first sets out a clear summary of the different legal instruments that relate to EU and international environmental controls on waterways and ports. This not only considers major EU directives (such as the Birds, Habitats and Water Framework Directives), but also relevant conventions, the importance of the EC Treaty, trans-European networks, the nature of integration and much else. The summaries are clear and get to the heart of issues that are discussed later in the book. This overall picture of the different instruments alone makes the book valuable.

The author then considers selected cases on the Birds and Habitats Directives (these being old enough to have built up sufficient case law), covering cases both in national courts and the ECJ, with most from Belgium, the Netherlands and the UK. These are critically important as they demonstrate that the lack of clarity in these directives is an open door to misunderstanding and legal challenge which presents a major obstacle to waterways' and ports' commercial interests, not least because of the uncertainties for business development.

The book continues by examining some integration initiatives at EU level. These are interesting, but as soft instruments are unable to tackle the underlying legal problems. The analysis is then brought together by considering 'unsolved problems'. This begins by learning lessons from the implementation of the Birds and Habitats Directives and examining this in the context of current and future implementation of the Water Framework Directive. The author draws conclusions from this, with some recommendations for future action.

For me, the synthesis of issues later in the book

proved most interesting. In his interim conclusions, the author states 'If legislation is not sufficiently integrated, if environmental legislation provokes outright conflicts with other rights and interests or if it merely lacks clarity, policy integration becomes an illusion and stakeholders will suffer serious frustration' (p 250). This is true and at the heart of the problem, although not, of course, limited to environmental law. For me there seem to be two fundamental problems that are difficult to solve.

The first is the lack of clarity in some EU environmental law and, especially, in that highlighted in this book. Some lack of clarity is the result of poor drafting. However, some is deliberate and an attempt to allow flexibility of implementation to the Member States. The Water Framework Directive is a good example of this. Flexibility is, however, open to interpretation and, therefore, challenge and legislators at EU level do not have a good track record of drafting law which is both flexible in application yet, at the same time, clear in its interpretation. Professor Hooydonk, for example, suggests that, because of interpretation issues in the Water Framework Directive, 'legal disputes may well arise' (p 237). I would certainly put money on this happening. Resolving the tensions between flexibility, clarity and certainty is a major challenge and failure, as demonstrated in the book, can have significant costs.

The second problem is the scope of EU law. We now have a significant body of EU environmental law. As the author is at pains to point out, much of the action of transport development at EU level is either in general statements within the Treaty itself, or through soft instruments. Most transport and development policies are developed at national level and, therefore, have difficulty 'competing' with obligations established in EU law. Thus where conflicts arise, the outcome from the courts is almost inevitable.

The book concludes with a series of recommendations, including a proposal for the creation of 'Portus 2010' – a coherent EU network of strategic port development areas. There is clearly a need for more coherent Community-wide policies on waterway and port use and development. I would not agree with all of the particular recommendations made in the balance between environmental and development interests. However, the list does, at the very least, identify key issues that need to be addressed. As a result, whichever side of the debate one is on, I do recommend this book for its comprehensive overview and thought-provoking analysis.

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