

A GUIDE TO EC ENVIRONMENTAL LAW

Dorothy Gillies



First published in the UK in 1999 by Earthscan Publications Ltd

Copyright © Dorothy Gillies, 1999

All rights reserved

A catalogue record for this book is available from the British Library

ISBN: 1 85383 585 4 paperback 1 85383 586 2 hardback

Typesetting by PCS Mapping & DTP, Newcastle upon Tyne Printed and bound by Biddles Ltd, Guildford and Kings Lynn Cover design by Declan Buckley

For a full list of publications please contact: Earthscan Publications Ltd

120 Pentonville Road London, N1 9JN, UK

Tel: +44 (0)171 278 0433 Fax: +44 (0)171 278 1142

Email: earthinfo@earthscan.co.uk

http://www.earthscan.co.uk

Earthscan is an editorially independent subsidiary of Kogan Page Limited and publishes in association with WWF-UK and the International Institute for Environment and Development

This book is printed on elemental chlorine free paper

ACKNOWLEDGEMENTS

I would like to thank Directorate-General XI of the European Commission for the financial assistance which allowed this book to be researched and written.

Thanks also to Vicky Squire for her conscientious and thorough research without which this book would not have been completed; to Noreen Burrows for reading drafts and giving encouragement; to my father, David Gillies, for his painstaking work in making my manuscript presentable and to my mother, Irene Gillies, for her encouragement. Special thanks to Gavin Muir for all his advice, patience and moral support.

LIST OF BOXES

1.1	The structure of the European Commission)
1.2	The structure of the Council of the European Union	6
2.1	Case study: what do member states have to do to implement a directive?	12
2.2	Case studies: do the member states actually have to achieve the	-
	results laid down in the directive or just take 'all practical	
	measures'?	13
3.1	The series of the Official Journal of the EC	17
4.1	Case study: deciding whether a project falls within annex I or	1
	annex II of the EIA directive	22
4.2	Council directive 90/313 on the freedom of access to information	
	on the environment	24
5.1	Case study: do the air quality directives only cover certain areas?	
	Do they create a right to clean air?	31
7.1	Case study: can a state take economic grounds into account when	5-
	designating a Special Protection Area for birds – the case of	
	Lappel bank	54
7.2	Case study: what 'imperative reasons of overriding public interest'	
	could allow a project to go ahead in an important habitat? What	
	compensatory measures will be carried out?	55
8.1	Case study: what is 'waste'?	65
8.2	Case study: can waste be dumped onto land without a permit if	
	the landowner gives permission? Can waste be dumped without	
	a permit if the person dumping it is not in the waste disposal	
	business or if the dumping of waste is only a one-off?	66
9.1	Case study: what is 'bathing water'? When did the time limit for	
	complying with the bathing water standards start to run? Is it	
	enough for a state to 'do its best' to achieve the bathing water	
	standards?	74
9.2	Case study: does a state have to designate shellfish waters for the	
	whole of its territory?	75
9.3	Case study: what derogations are allowed from the drinking water	
	standards?	76
9.4	Case study: what kind of 'emergency' would allow derogation from	
	the drinking water standards?	77
	Relying directly on a provision in the directive	88
10.2	Examples of the types of provisions in environmental directives on	
40.2	which it may be possible to rely directly	89
10.3	How can directly effective provisions be used to protect the	
10 /	environment?	91
10.4	Parties against whom a directive can be used	92

11.1	Types of environmental directives which may be intended to give	
	rights to individuals	96
11.2	'Sufficiently serious' breaches of EC environmental law	98
12.1	Ensuring that individuals can use their Community law	
	environmental rights	101
13.1	Making a complaint to the Commission – key points	107
13.2	The main stages in considering a complaint	110
13.3	Pro-forma of a complaint form to the Commission	112
13.4	Notes which appear on the back of a pro-forma complaint form	113
14.1	Sending a petition to the Parliament – key points	116
15.1	Case study: a complaint to the Ombudsman about the	
	Commission's handling of an environmental complaint	122
15.2	Case study: complaints to the Ombudsman about access to	
	information from Community institutions	123
15.3	Making a complaint to the European Ombudsman - key points	124
15.4	Pro-forma of a complaint form to the Ombudsman	125
16.1	Flow chart of the co-decision procedure under Article 189b of the	
	Amsterdam Treaty	132
17.1	How to find out what EC environmental laws are planned	136
17.2	Trying to influence EC environmental laws – some key points	137
17.3	Key players when a policy decision is being taken and policy	
	objectives are agreed upon	139
17.4	Key contacts when a proposal is being drafted	142
17.5	Key contacts when a first draft of the proposed law is circulated	142
17.6	Key contacts when the Commission adopts the proposal	143
17.7	Key contacts when Parliament and ECOSOC are giving opinions	146
17.8	Key contacts when the proposal is considered by the Committee	
	of Permanent Representatives (COREPER) before final adoption	
	by the Council	146
17.9	Guidelines for briefing key people in the EC institutions	147
18.1	Case study: access to Commission documents – Worldwide Fund	
	for Nature (WWF); Mullaghmore, Burren National Park, Ireland	154
19.1	The European Commission's directorates-general and services	158

ACRONYMS AND ABBREVIATIONS

BAT best available technique CFC chlorofluorocarbon CFI Court of First Instance

CITES Convention on International Trade in Endangered Species

of Wild Flora and Fauna

Commission European Commission
Community European Community
COR Committee of the Regions

COREPER Committee of Permanent Representatives

Council Council of the European Union

Dec decision

DG directorate-general

DGXI Directorate-General XI (environment, nuclear safety and

civil protection)

Dir directive

EC European Community

ECOSOC Economic and Social Committee

ECR European Court reports
ECU European currency unit

EDC European Documentation Centre
EEC European Economic Community
EIA environmental impact assessment

EINECS European Inventory of Existing Commercial Chemical

Substances

EIONET European Environment Information and Observation

Network

EMAS eco-management and audit scheme

EMEP European Monitoring and Evaluation Programme

EU European Union

EURATOM European Atomic Energy Community
EUR-OP Office for Official Publications of the EC

European Court European Court of Justice

GLOBE-EU Global Legislators for a Balanced Environment

GMO genetically modified microorganism

HCFC hydrochlorofluorocarbon ICE Information Centre for Europe

IPPC integrated pollution prevention and control

MEP Member of the European Parliament

MW megawatt

OJ Official Journal of the European Communities

Parliament European Parliament

XVI A GUIDE TO EC ENVIRONMENTAL LAW

PCB	polychlorinated biphenyl	
-----	--------------------------	--

PCP pentachlorophenol

PCT polychlorinated terphenyl pe population equivalent PIC prior informed consent

Reg regulation

RSPB Royal Society for the Protection of Birds

SAC Special Area of Conservation SCI Site of Community Importance

SPA Special Protection Area

UK United Kingdom US United States

VOC volatile organic compound WWF Worldwide Fund For Nature This book is for everyone with an interest in the environment in the member states of the European Union (EU). It provides individuals, environmental organizations, groups with local environmental problems, local authorities and lawyers with the information which they need to allow them to feel confident about using European Community (EC) environmental law and about trying to influence future EC environmental laws.*

Most people with an interest in the environment know that in recent years the EC has been active in trying to protect the environment and control pollution. They will, for example, probably have heard of the EC's laws on environmental impact assessment, on bathing water and drinking water and may even have heard of the European Commission and its attempts to ensure that member states comply with the EC's environmental laws. They may have heard rumours of proposals for new Community environmental laws, such as those covering landfill of waste and water quality. What they may not be aware of is the extent to which they themselves can use the EC's laws and institutions to protect the environment and influence EC law-making in order to ensure that the Community's future environmental protection laws are better than those adopted in the past. This book aims to make readers aware of the ways in which they can use EC environmental law and of the influence that their activities can have on the future development of EC environmental laws.

Part One of the book contains a brief introduction to the European Community and its institutions and bodies. It also introduces European Community environmental law and policy, explains the types of measures which can be adopted to bring about new law and policy in this area and provides some guidance on the structure of EC laws to help those who will be reading EC laws for the first time.

Part Two explains the principal requirements of most of the main EC environmental laws which are currently in force, discusses laws recently adopted by the EC institutions and identifies some of the most far-reaching proposals for new EC environmental laws which are currently going through the Community's legislative process. These chapters explain general environmental measures, such as environmental impact assessment, access to environmental information, integrated pollution prevention and control, ecomanagement and audit, eco-labelling and measures relating to air, noise, chemicals, industrial risks, nature conservation, waste and water.

^{*} Under the Treaty on European Union of 1992, a distinction is made between the 'European Union' (EU) and the 'European Community' (EC). This treaty established the EU to provide a framework for the EC's member states to work towards a common foreign and security policy and cooperation in the field of justice and home affairs. Although the institutions and member states of the EU and EC are the same, environmental laws are adopted under the EC Treaty and are therefore 'EC laws'.

Part Three explains the various ways in which individuals and groups can try to make sure that EC environmental laws are complied with so that the environment is protected. It begins by looking at ways in which EC environmental law can be used in the member states. This includes the possibility of relying directly on the provisions of the EC environmental laws themselves, asking a national court to interpret national law in order to conform to EC environmental law and suing the state for compensation where it has failed to comply with an EC environmental law. The duties on the national courts to make sure that individuals and environmental groups can make full use of EC environmental law are also explained.

The following chapters in this part of the book look at the ways in which the EC institutions can help to ensure that EC environmental laws are complied with throughout the member states. They explain how individuals or groups can make complaints to the Commission and send petitions or letters to the European Parliament to complain about breaches of EC environmental law. The final chapter in this part of the book explains how to make a complaint to the European Ombudsman if a Community institution or body has not acted properly in carrying out its functions.

Part Four of the book explains the ways in which individuals or organizations can influence future EC environmental laws. It summarizes the EC's law-making procedures, explains how individuals and environmental groups can make sure that they know about planned proposals for EC environmental laws and discusses the stages at which individuals or groups can try to influence the content of these proposed laws. Methods which can be used to exert influence on the institutions are also discussed.

The final part of the book explains where further information on EC environmental law can be found and gives contact details for some of the most useful sources of further information on EC environmental matters.

The book is designed to provide readers with a format that is easy and quick to read. Full references for the relevant EC laws and cases are given throughout and further reading is suggested to allow readers to carry out further research in respect of a particular environmental problem.

CONTENTS

	mowledgements t of boxes	xii xiii
	onyms and abbreviations	xiii
	out this book	xvii
1100		wen
	PART ONE BACKGROUND INFORMATION	
1	The European Community and its institutions	3
	The formation and development of the European Community	
	and the European Union	3
	The EC's main institutions and bodies	4
	European Commission	4
	What is the Commission and how is it organized?	4
	What does the Commission do?	5
	Council of the European Union	6
	What is the Council and how is it organized?	6
	What does it do?	7
	European Parliament	7
	What is the European Parliament and how is it organized?	7 7 7 7
	What does it do?	
	Economic and Social Committee	8
	What is it and what does it do?	8
	Committee of the Regions	8
	What is it and what does it do?	8
	European Court of Justice and Court of First Instance	8
	What are they and how are they organized?	8
	What do they do?	8
	European Ombudsman	9
	What is it and what does it do?	9
	European Environment Agency What is it and what does it do?	9
2		
4	Sources of EC environmental policy and law Introduction to EC environmental policy and law	10 10
	Action Programmes for the Environment	10
	Sources of EC environmental law	11
	EC Treaty	11
	Directives	11
	Regulations	13
	Decisions	13
	International agreements	13
	Case law of the European Court and Court of First Instance	15
3	Reading EC environmental laws	16
0	Finding laws, proposals for laws and other information	16
	Finding case law of the European Court and the Court of	10
	First Instance	16
	The structure of EC laws	16

PART TWO EC LAWS FOR THE PROTECTION OF THE ENVIRONMENT

4	Some general EC environmental laws	21
	Introduction	21
	Environmental impact assessment	21
	Access to environmental information	23
	Integrated pollution prevention and control	23
	Eco-management and audit scheme	27
	Eco-labelling	27
	Laws on EIA	28
	Selected cases on EIA	28
	Law on access to environmental information	28
	Selected cases on access to environmental information	29
	Law on IPPC	29
	Law on eco-management and audit	29
	Law on eco-labelling	29
5	Air and noise	30
	Introduction	30
	Air	30
	Noise	30
	Air quality standards	30
	Air quality in relation to specific substances	30
	General air quality	31
	Control on emissions	33
	Emissions from industry	33
	The basic framework	33
	Detailed requirements for certain industries	33
	Convention on long-range transboundary air pollution	34
	Integrated pollution prevention and control	34
	Emissions from vehicles	34
	Emissions of carbon dioxide and other greenhouse gases	34
	Emissions from volatile organic compounds	35
	Fuel quality standards	35
	Noise	36
	Laws relating to air	36
	Selected cases relating to air	38
	Laws relating to noise	39
6	Chemicals and industrial risks	40
	Introduction	40
	Dangerous chemicals and substances	40
	Evaluating the risks of substances	40
	Marketing and use	41
	Classification, packaging and labelling	41
	Restrictions on specific substances	42
	Pesticides	42
	Biocides	43
	Asbestos	43
	Batteries	43
	Ozone-depleting substances	43
	Genetically modified microorganisms (GMOs)	44

	Contained use of GMOs	44
	Release of GMOs	44
	Major accident hazards of certain industrial activities	45
	Transport of dangerous goods	46
	By sea	46
	By road	47
	By rail	47
	Export and import of dangerous substances	47
	Transport of radioactive substances	48
_	Laws relating to chemical and industrial risks	48
7	Nature conservation	52
	Introduction	52
	Birds, animals, plants and habitats within the EC	52
	Protection of birds	52
	Identification and protection of bird habitats	53
	Identification	53
	Protection of bird habitats	53
	Protection of animal and plant species	55
	Identification and protection of plant and animal habitats	56
	Identification	56 57
	Protection of animal and plant habitats Protection of forests	57
	Restrictions on the use of large drift nets	57
	International agreements on the protection of species and their)/
	habitats	58
	Convention on the conservation of migratory species of wild)0
	animals	58
	Convention on the conservation of European wildlife and natural habitats	58
	Convention on biological diversity	58
	Convention on the protection of the Alps	59
	Convention on the conservation of Antarctic marine living	
	resources	59
	International tropical timber agreement	59
	Trade in wild animals and plants	60
	Endangered species	60
	Seal skins	60
	Fur from leghold traps	61
	Laws relating to nature conservation	61
	Selected cases on nature conservation	62
8	Waste	64
	Introduction	64
	Waste and hazardous waste	64
	Waste incineration	66
	Municipal waste incinerators	66
	Hazardous waste incinerators	67
	Specific categories of waste	67
	Packaging waste	67
	Waste oils	68
	PCBs and PCTs	68
	Sewage sludge	68
	Batteries and accumulators	69

	Titanium dioxide	69
	Supervision and control of shipments of waste	69
	Laws relating to waste	70
	Selected cases relating to waste	71
)	Water	73
	Introduction	73
	Quality of waters used for particular purposes	73
	Bathing water	73
	Fish and shellfish waters	75
	Drinking water	75
	Control of discharges to water	77
	Dangerous substances	77
	Integrated pollution prevention and control	78
	Protection of groundwater (aquifers)	78
	Urban waste water treatment	79
	Nitrates from agricultural sources	80
	International agreements in relation to water	80
	Convention for the prevention of marine pollution from	0.0
	land-based sources (Paris Convention)	80
	Agreement for cooperation in dealing with pollution of the	
	North Sea by oil and other harmful substances (Bonn	0.1
	Agreement)	81
	Convention on protection of the marine environment of the	01
	Baltic	81
	Convention for the protection of the Mediterranean Sea against pollution	81
	Convention on the protection and use of transboundary	
	watercourses and international lakes (Helsinki Convention)	81
	Convention for the protection of the Rhine against chemical	
	pollution	81
	Laws relating to water	82
	Selected cases relating to water	83
	PART THREE USING EC LAW TO PROTECT	
	THE ENVIRONMENT	
10	Using EC environmental laws in the member states	87
	Introduction	87
	Relying directly on directives	87
	The principles of direct effect and supremacy	87
	What provisions in an environmental directive could be relied	0.0
	on directly?	88
	How can provisions in a directive be used to protect the	00
	environment?	89
	Who can a directive be used against?	89
	Relying on international environmental agreements	92
	Sympathetic interpretation	93
	Selected cases on using EC environmental laws in the	0.2
	member states	93

PART FOUR INFLUENCING FUTURE **EC** ENVIRONMENTAL LAWS

16	How are EC laws made?	129
	Introduction	129
	How do the EC institutions make laws?	129
	The consultation procedure	130
	The current position	130
	What will happen to the consultation procedure when the	
	Amsterdam Treaty comes into force?	130
	The cooperation procedure	131
	The current position	131
	What will happen to the cooperation procedure when the	
	Amsterdam Treaty comes into force?	131
	The co-decision procedure	131
	The current position	131
	What will happen to the co-decision procedure when the	
	Amsterdam Treaty comes into force?	133
17	How to influence future EC environmental laws	134
	Introduction	134
	How to find out what EC environmental laws are planned	134
	Some general points about trying to influence proposed	
	environmental laws	135
	How can individuals or environmental groups influence the	
	content of future EC environmental laws?	137
	Stage 1 – A proposal for a new law is prepared	138
	Introduction	138
	A policy decision is taken to propose a new law and policy	
	objectives are agreed upon	138
	Can the Commission be 'encouraged' to propose a new	
	environmental law?	138
	A proposal is drafted	139
	A first draft of the proposal is circulated	142
	The Commission adopts the draft as its formal proposal for	
	a new law	142
	Stage 2 – The proposal is sent to the Council and is considered	
	by ECOSOC, Committee of the Regions and European	
	Parliament	143
	What does the Council do at this stage?	143
	What is the role of ECOSOC and COR at this stage?	144
	What happens when the proposal is sent to the European	
	Parliament?	144
	The proposal is examined in one of Parliament's	
	committees	144
	A vote is taken by the whole Parliament (the first reading)	145
	The second reading	145
	Stage 3 – The proposal is considered by the Committee of	
	Permanent Representatives (COREPER) before final adoption	
	by the Council	146
	How can an environmental group get its point across to the key	
	people in the institutions?	147
	Conclusion	148

PART FIVE FINDING OUT MORE

18	Where to find out more	151
	Introduction	151
	Where to find more information	151
	European Documentation Centres (EDCs)	151
	Office for Official Publications of the EC (EUR-OP)	152
	Internet	152
	Information from the Community's institutions and	
	organizations	153
	European Parliament	153
	Commission, Council and European Environment Agency	153
	Laws relating to access to information from the institutions	155
19	The EC's organization, useful contacts and addresses	156
	Introduction	156
	Environmental organizations	156
	European Commission	157
	The Directorates and Units of DG XI of the Commission	159
	European Commission offices in the member states	161
	Council of the European Union	164
	European Parliament	164
	Information offices of the European Parliament in member	
	states	164
	Economic and Social Committee	165
	Committee of the Regions	165
	European Court of Justice and Court of First Instance	166
	European Ombudsman	166
	European Environment Agency	166
	Office for Official Publications of the European Communities	
	(EUR-OP)	166
	Sales agents for EC official publications	166
	Passing Passing	200
Furt	ther reading	173
	Index	