European Environmental Law: What Public Authorities and Practitioners Need to Know

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1. European Union ('EU') law is part of the law of the United Kingdom. This was established by the European Communities Act 1972. The present foundations of EU law are the Treaty on European Union ('TEU') and the Treaty on the Functioning of the European Union ('TFEU'). References in the case law to article numbers will often be to equivalent but differently numbered provisions of the predecessor treaties.

2. Much of our domestic environmental legislation derives from, or is determined by, EU legislation. The most important form is that of Directives. Art 288 TFEU provides inter alia that

> 'A directive shall be binding, as to the result to be achieved , upon each Member State to which it is addressed but shall leave to the national authorities the choice of forms and methods'

3. Member states have a duty of cooperation in fulfilling the tasks of the EU. Art 4(3) TEU provides that

> 'The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the treaties or resulting from the acts of the institutions of the Union'

4. All public authorities are organs or emanations of the state and are subject to the Art 4 (3) TEU duty. The combination of this and the Art 288 TFEU duty means that all public authorities in Wales, and elsewhere in the UK, have a duty to use their powers to achieve the results required by EU Directives. The memorable European Court ('ECJ') Justice case establishing that local authorities are subject to the duty of cooperation was the Milan football stadium tender case, Case C 103/88 Fratelli Costanzo v Milano [1989] ECR 1839.

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Canon of Convergent Construction

5. Directives must be transposed by national legislatures into domestic law. Where domestic law is intended to give effect to EU legislation (whether pre existing or specifically enacted for the purpose) then it must be interpreted so far a possible to be consistent with the EU legislation (Case C 106/89 Marleasing [1990] ECR I-4135 [8]) Welsh and other UK transposing legislation must so far as possible be interpreted in accordance with the canon of 'convergent construction' (to use the felicitous phrase coined by Sedley LJ in R v Durham County Council ex p Huddleston (CA) [2000] 1 WLR 1484 at p 1490 [10]. (the Durham quarry old mineral conditions conditions inertia approval). This can involve extremely strained interpretations, effectively adding words to legislation (Litster v Forth Dock [1990] 1 AC 546 Pickstone v Freemans [1989] AC 66)

6. EU legislation is drafted differently from domestic legislation. There is no attempt to be comprehensive. Its style is succinct and accessible. It inevitably calls for a 'teleological' or purposive approach to construction. Four points should be emphasised.

7. First: it is usually much easier to understand domestic legislation (which is often convoluted in expression and impenetrable in organization) by looking first at the EU legislation. EU legislation must in any event always be directly considered so as to ensure that the domestic legislation can be properly interpreted in accordance with the canon of convergent construction (and disapplied if non compliant).

8. Second: the European Commission produces Guidance which may be useful in interpreting doubtful points. For example it there is guidance on Screening, Scoping and Exemptions under the EIA Directive 85/337/EEC.

9. Third: fundamental principles of EU environmental law are important in interpreting EU legislation and thus the transposing domestic legislation.

10. Fourth: preambles are important (eg 'major' in preamble to 85/337/EEC explains what 'significant' means)

Fundamental principles of EU Environmental Law

11. The promotion of a high level of protection and improvement of the quality of the environment is identified by Article 3 TEU as one of the fundamental tasks of the Community. Article 191 TFEU requires that Community policy should be based inter alia on

    the precautionary principle

    the preventive principle

    the polluter pays principle and

    the rectification at source approach.

These principles have been highly influential in the process of reasoning of the ECJ. For example it has held that the EIA Directive has a

> "wide scope and very broad purpose"
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> (Case C -72/95 Kraaijeveld v Zuid Holland ('Dutch Dykes') [1997] Env LR 265 at [31] and [39])

thus including within its scope projects and modifications thereto which would on Anglo Welsh principles of statutory construction been excluded.

12. Article 191(3) TFEU /174(3) EC however requires that account also be taken of -

    Available scientific and technical data

    Differences between regions (potentially important in Wales)

    Potential benefits and costs of action or inaction

    Economic and social development

13. It would therefore have been easy for the Court to view the precautionary principle[2] as little better than a vague policy aspiration, and certainly of

[2] E Fisher provides an illuminating discussion in 'Precaution, Precaution, Everywhere, Developing a 'Common Understanding' of the Precautionary Principle in the European Community' (2002) 9 Maastricht Journal of International and Comparative Law 7.

no value in making hard decisions on concrete situations. That has not been its approach.

14. The ECJ in interpreting EC environmental legislation has applied the principle[3], in giving a broad scope where more than one interpretation is feasible. Recent cases show that it has no reluctance in doing so. It has been willing to do so even where the effect has been to extend the literal meaning of the legislative words used.

15. Thus in the mechanical cockle fishing case C-127/02 Waddenzee[4] [2004] ECR I 7405 the Court held that the meaning of the phrase in the Habitats Directive[5] *'likely to have significant effects'* on a Special Area of Conservation was as a result of the precautionary principle to be understood in the sense that such a likelihood existed if the possibility of harm could not be excluded on the basis of objective information[6]. The consequence is that absent proof of the harmlessness of a project it must be subject to an 'appropriate assessment' to ascertain whether it will adversely the affect the integrity of the site concerned. If it will, it may only go ahead if there are no alternatives and there are 'imperative reasons of overriding public interest, including reasons of a social or economic nature'[7] The application of the principle in this context is robust although its force is applied through procedural rather than substantive obligations. The importance of this broad definition of the concept of 'likelihood' as the meaning of the phrase 'likely significant effects[8]' is also critical to the scope of the obligations under the EIA Directive 85/337/EEC. The ECJ expressly suggested that the same approach be taken to both Directives[9].

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[3] despite the difficulties of definition well illustrated in one distinguished commentator's view that 'Attempting to define the precautionary principle in such a way that it could be simply and comprehensively applied to give clear answers in any particular case is a thankless and probably pointless task' Maria Lee 'EU Environmental Law' Hart Oxford and Portland 2002

[4] The cockle fishers recently lost their case brought in the European Court of Human Rights on the grounds that they had had no opportunity to answer the AG's Opinion. (2009) 48 EHRR SE18 [2009] Env LR 27

[5] Article 6 (3) Dir 92/43/EEC

[6] [43]and [44]

[7] Article 6 (4)

[8] 85/337/EEC Annex IV (4) and Article 5 (2)

[9] Despite doubts about this expressed in the Long Vacation by a Manchester circuit judge sitting in the Administrative Court in Hargreaves v SSCLG and Wyre Forest DC (currently subject to appeal). The CA in Morge v Hampshire [2010] EWCA Civ 608 (not appealed on this point) accepted that the test was 'real' risk' (see ward LJ at [180]

16. The precautionary principle has been regularly invoked in the endless quest for the meaning of the term 'waste' whose definition has been thereby broadened with the effect that the control of the safeguards of the Waste Framework Directive (formerly) 75/442/EEC has thereby been extended. In Case C 1/03 Van de Walle [2005] Env LR 24 the Court held that an accidental spillage and the soil thereby contaminated could be regarded as waste. An important part of its reasoning was the purpose of the Directive understood in the light of the aim of a 'high level of protection' for the environment and the precautionary and preventive principles

Disapplication of Incompatible Domestic Law

17. Insofar as national legislation cannot be so construed it must be disapplied (Case 106/77 Simmenthal (beef inspection charges) [1978] ECR 629 (ex p Huddleston, Case C201/02 Wells (Conyghar Quarry old mineral permission conditions) [2004] ECR I-723, Case C-290/03 Barker (the Crystal Palace reserved matters approval)

Direct Effect

18. Directives are addressed to member states. Article 288 TFEU is not drafted in a way which immediately suggests any possibility that citizens could directly invoke them in any legal proceedings. The ECJ however adopted various reasons for holding that in some circumstances Directives may be invoked in national courts even though they have not been correctly transposed. These initially included the principle of effectiveness, the consequences for domestic law inherent in the binding nature of Directives and the implications of the power and duty of national courts to seek preliminary rulings in respect of directives[10].

[10] Van Duyn Case 41/74 [1974] ECR 1337

Vertical Direct Effect:

19. Later the Court based its approach on the principle that member states who failed to adopt directives could not rely on their own wrongdoing[11] against subjects seeking to rely on the rights which they would have had had the Directive in question been correctly transposed. This is neatly expressed in the Latin aphorism *Nemo auditur propriam turpitudinem allegans*[12]. The adoption of this rationale in preference to that of the principle of effectiveness naturally led to the general principle that a directive could only have vertical but not horizontal direct effect. A subject could only invoke it against the state, not against another subject.[13] Many problems in the enforcement of environmental protection directives might have been been alleviated had the view of van Gerven and Jacobs AAG prevailed that directives should be capable of horizontal direct effect[14].

Triangular Direct Effect

20. The Court has overcome two obstacles to the direct effect of environmental protection directives.

21. First some time ago it sidestepped the problem that measures for the protection of the environment are designed to protect a common interest rather than create individual rights. Notwithstanding this In Kraajeveld[15] and Bozen[16] the Court held that the Environmental Assessment directive[17] could be directly invoked in national courts. Lord Bingham of Cornhill and the House of Lords accepted in Berkeley v SSE that it created rights for individuals (see below).

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[11] Warner AG's Opinion in Enka 38/77 [1977] ECR 2203 at 2226 and the ECJ 's Judgement in Ratti 148/78 [1979] ECR 1629 at [22]

[12] see Van Gerven AG's Opinion in Case C-262/88 [1990] ECR I-1889

[13] Marshall C152/84 [1986] ECR 723 and Faccini Dori C-91/92 [1994] ECR I 3325

[14] Marshall No 2 Opinion C-271/91 [1993] ECR I 4367 and Vaneetveld C-316/93 [1994]ECR I 763

[15] Case C-72/95 [1996] ECR I 5403

[16] Case C-435/97 [1999] ECR I-5613

[17] 85/337/EEC

22. Second it has recently in Wells[18] limited the scope of the restriction against horizontal direct effect by rejecting the UK Government's view that so called 'triangular' direct effect falls with it.

23. The problem of 'triangular' direct effect arises in this way. Much environmental protection is achieved through a requirement that before potentially harmful activities are undertaken a consent is obtained. Where such a consent has been granted in breach of the requirements of a Directive proceedings seeking the annulment of the consent are likely, if successful, adversely to affect the interests of the body wishing to undertake the activity. Should proceedings by an affected or otherwise concerned individual or group be seen as an example of the admissible vertical enforcement of the Directive? Or should they be seen as the inadmissible horizontal enforcement of the Directive against the undertaker of the activity? This problem is particularly acute in the case of the EIA Directive. The foundation of the Directive is the transfer from the state and potential objectors to the promoter of development projects of the burden of investigation and assembly of relevant data for assessing the significance of the likely significant environmental effects[19].

24. The Court of Appeal in Huddleston[20] rejected the Government's view that once planning permission had been granted the direct application of the EA Directive would infringe the rule against horizontal direct effect. It cited among other ECJ cases that of Costanzo[21] where the award of a contract for the construction of a football stadium in Milan had been annulled because the tendering process had breached the requirements of an untransposed directive. Under complicated legislation imposing environmental protection conditions on old quarrying consents applications which had not been determined within three months were deemed to be granted. The House of Lords had previously held[22] that such applications were applications for development consents and subject to the EA Directive.

25. Mr Huddleston lived next to an old quarry and was worried about the effect of resumption of quarrying on his home. He challenged the consent deemed to be granted by reason of Durham CC's failure to make a

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[18] Case C-201/02 The Queen on the application of Delena Wells v SSTLGR

[19] Article 5 (1)

[20] R v Durham County Council ex p Huddleston [2000] 2 CMLR 313, [2000] 1 WLR 1484

[21] 103/88 [1989] 2 CMLR 1839

[22] R v North Yorkshire ex p Brown [2000] 1 AC 397

decision within three months because no environmental assessment had been carried out. The quarrying company and the Government claimed that as the Directive had not been properly transposed into English law he could not rely on it since he would in effect be seeking to deprived the quarrying company of a right which it had acquired. As Brooke LJ said.

> ' I, an individual citizen, should have had a valuable opportunity to take part in an informed consultation in relation to an extraction project which will detrimentally affect my home and environment in which I live.'

The House of Lords refused leave to appeal and declined to make a reference to the ECJ.

26 Thereafter somewhat uncharacteristically the Government agreed to a reference to the ECJ at first instance in another quarrying case, Wells[23], hoping perhaps to persuade the ECJ to reverse the effect of Huddleston. Mrs Wells lived next to Conyghar Quarry. Neither the mineral planning authority nor the Secretary of State to whom the operator appealed considered the possible need for an environmental assessment pursuant to 85/337/ EEC before determining the conditions under which the resumption of quarrying operations could take place. The Court confirmed the House of Lords decision in Brown[24] that the imposition of new conditions on old mineral consents constituted the grant of a development consent which in principle could be subject to a requirement for environmental assessment.[25]

27. It rejected the UK Government's argument that the consequences to the operator of having to halt its quarrying operations as a result of the enforcement through direct effect of the Directive constituted inadmissible 'inverse' direct effect in relation to the quarry owners. The Court expressly[26] dealt with and decisively rejected the argument based on the adverse consequence of the immediate interference with the ability to continue with quarrying operations. It did not however expressly deal with the effect on the operator of the transfer of the burden of investigating the environmental effects of the quarrying[27].

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[23] Case C-201/02 The Queen on the application of Delena Wells v SSTLGR

[24] R v North Yorkshire ex p Brown [2000] 1 AC 397

[25] at [46] and [47]

[26] At [56]-[58]

[27] Lord Steyn's observation in Burkett [2002] UKHL 23 that ' The Directive seeks to redress to some extent the imbalance in resources between promoters of major developments and those concerned, on behalf of individual or community interests, about the environmental effects of such projects' (para 15) not only reflects an appreciation of the value of participatory democracy and the economic obstacles to its realisation in practice but

28. It made clear that where a consent procedure involved several stages the assessment should in principle be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment. It left open the question of whether there should be a multi stage assessment process if the effects become apparent at different stages. This was perhaps implied[28]. The Court answered that question in the affirmative when it delivered its judgments in the Crystal Palace case Barker v LB Bromley and Commission v United Kingdom[29]. The English Court of Appeal[30] had held that no environmental assessment could ever be required at the stage of consideration of matters reserved or deferred at the time of the grant of outline planning permission. The House of Lords referred the question.

29 The Court in Wells reaffirmed the breadth of the duty of loyal cooperation imposed then by Article 10 EC (now article 4 (3) TEU). It reaffirmed in this context the applicability of the duty to nullify the unlawful consequences of a breach of EC law establishes in Humblet[31] and Francovich[32]. It held, somewhat ambiguously in an English context, that it extended to the revocation or suspension of a consent already granted to ensure that an assessment takes place 'subject to the limits laid down by the principle of procedural autonomy of Member States'.[33]

30 It is not entirely clear whether the term 'revoke' was used as a generic term encompassing annulment by judicial quashing as well as in the sense of revocation under English planning legislation[34] by planning authorities (with obligation to pay compensation to the operator deprived of his permission[35]). This leaves open the question in an English context of whether the duty to revoke exists where the aggrieved citizen seeking it could have, but failed to

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also acknowledges implicitly that a burden is imposed by the Directive on promoters of projects as well as the state.

[28] at [52]-[54]

[29] Cases C-290/03 and C- 508/03 [2006] QB 764

[30] R v Bromley LBC ex p Barker [2001] EWCA Civ 1766

[31] Humblet v Belgium Case 6/60 [1960] ECR 559

[32] Francovich v Italy Case C 6,9/90 [1991] ECR I 5357 at [36]

[33] [65]-[69]

[34] Town and Country Planning Act 1990 ss 97-104

[35] which according to a decision of Richards J as he then was is not a factor which planning authorities may take into account when deciding whether or not to exercise this power *R v SoS ex p Anwick DC.* It si difficult to think that this decision could ever survive scrutiny by a higher court, as it inevitably encourages in many cases either intellectually dishonest decision making or financial ruin.

apply within three months[36], for the annulment/quashing of the consent but instead at a later stage seeks revocation. If it means that he can insist on revocation even though he did not challenge the consent then the approach of the High Court illustrated in case such as *CPRE*[37] will have to be revisited.

31 The tantalising suggestion at [69] that compensation might be paid instead of any other form of relief is problematic. First it is difficult to see how such compensation could be assessed. The EA Directive does not mandate any substantive outcome, but merely requires a particular inclusive decision making process to be adopted. Second it is hardly consistent with a broad approach to standing or an appreciation that the individual litigant is protecting a common interest[38] in respect of challenges to consents granted in breach of the EA Directive. As Colomer AG observed in 176/03

> 'Thus there emerges a right to enjoy an acceptable environment, not so much on the part of the individual as such, but as a member of a group, in which the individual shares common social interests[39]'

32 It suggests that only those whose material interests are potentially directly affected have standing. Who else could claim damages? It is however consistent with the thinking illustrated in Munoz v Frumar[40] which requires that damages must be available between economic operators for breaches of regulations

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[36] CPR 52 see Fantask C-188/95 [1987] ECR I 6783 and Burkett v LB Hammersmith and Fulham [2002] UKHL 23

[37] R v LB Hammersmith and Fulham ex p CPRE [2000] Env LR 565

[38] Some of the language in English cases such as Huddleston cited above and Berkeley [2001] 2 AC 301 (HL) is of course consistent with this view. In the latter cases Lord Hoffmann observed that 'The directly enforceable right of the citizen…is not merely a right to a fully informed decision on the substantive issue. It must have been adopted on an appropriate basis and that requires the inclusive and democratic procedure prescribed by the Directive [for the] public, however misguided or wrongheaded its views may be…..', (615 G)

[39] Case 176/03 Opinion [67]

[40] C-253/00 [2003] Ch 328

What if Something has Gone Wrong?

33 There is a duty to nullify the unlawful consequences of a breach of EC law (Case C-6,9/90 Francovich v Italy ECJ [1991] ECR I-5357 at [36]). Thus for example the heart of the EIA Directive is the prohibition on the grant of a development consent without EIA where the project would have SEE. The HL held in Berkeley v SSE [2001] 2 AC 663 that courts have no discretion not to quash a planning permission granted in breach of the Directive unless the breach is *de minimis*. The HL demonstrated the operation of the *de minimis* exception in Edwards v Environment Agency [2008] UKHL22. It. declined to quash a permission where events had moved on so that the original defect was of academic interest. The same approach was taken in Barker [2006] UKHL where it did not quash the unlawfully approved reserved matters (where the permission had expired through effluxion of time).

34. Time for challenge runs form the grant of permission (rather than the occurrence of the error) (Burkett). If more than 3 months have passed and the court is not willing to extend time to challenge the ECJ implied in Wells that permissions should be revoked. This can, of course, involve substantial sums of compensation. Planning authorities should be cautious therefore before invoking delay as a reason for resisting challenges to planning permission in these circumstances.

Promptitude Not a Requirement in EU Cases

35 The ECJ held early last year in Case C-406/08 Uniplex v NHS Business Services Authority that the CPR requirement for promptitude cannot be interpreted as a limitation period. The court held at [39] that certainty required that limitation periods must be sufficiently precise, clear and foreseeable to enable individuals to ascertain their rights and obligations. It endorsed at [42] Advocate General Kokott's opinion at AG 69 that a limitation period the duration of which is placed at the discretion of the court is not predictable in its effects and fails to ensure effective transposition of a Directive's requirements. It did not hold, as some wrongly suppose, that time to seek quashing orders did not start to run until the potential challengers were actually aware of the decision—although it did hold that time for seeking other sorts of relief did not start until the aggrieved party knew of the decision.

36 The High Court has now accepted in R (Buglife) v. Medway Council [2011] EWHC 746 (Admin) in challenges based on EU law there is no

requirement for proceedings to be brought promptly The CPR 54 must be disapplied. Proceedings must merely be brought within 3 months.

Direct Effect of International Environmental Agreements of the EU

37 Agreements made by the EU under Art 191 (4) TFEU (ex 174(4)EC) on the environment may directly bind member states under Art 216 (2) TFEU (ex 300 (7) EC). Thus EDF was held by the ECJ in Case 213/03 Pecheurs de l'Etang de Berre v EDF to be directly bound by a Mediterranean protection treaty which the EU had entered. As the ECJ recently said in another case

> 'A provision in an agreement concluded by the European Union with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure'

Costs After Aarhus

38.There is a longstanding controversy about the adverse costs orders which are generally made against unsuccessful challengers. The Sullivan Report and the Jackson Report have not yet led to a resolution of the challenge presented by Article 9 of the Aarhus Convention. It is a difficult question. The fear of a large costs award has a chilling effect on even meritorious claims. But local planning authorities are short of funds for worthwhile activities, so any failure to recover their costs when they are successful reduces the opportunities they have for other expenditure in the public interest. The ECJ held in C 427/07 Commission v Ireland that the Irish approach to costs, which is broadly similar to that of England, did not comply with 85/337/EEC as amended to reflect the Aarhus Convention[41] because a discretion not to award costs was insufficient to ensure that access to the courts was not unreasonably expensive. Protective costs orders are available.

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[41] Held in relation to standing not to be directly effective by the ECJ in Case C-240/09, Lesoochranárske zoskupenie VL v Ministerstvo životného prostredia Slovenskej republiky (the Slovenian bear case) '…Article 9(3) of the Aarhus Convention does not have direct effect in EU law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by EU law…..'

39 In Pallikaropoulos the SC costs officials adopted the following approach

> '18…..we are presently minded to adopt the test of "prohibitively expensive" which
> was propounded in the 2008 Sullivan Report:
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> > "… costs, actual or risked, should be regarded as "prohibitively expensive" if they would reasonably prevent an "ordinary" member of the public (that is, "one who is neither very rich nor very poor, and would not be entitled to legal aid") from embarking on the challenge falling within the terms of Aarhus."
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> 19. That seems to us to require us to start by making an objective assessment of what
> costs are reasonable costs. However, any allowance or disallowance of costs we
> make must be made in the light of all the circumstances. We presently take the view
> that we should also have regard to the following:
> i) The financial resources of both parties.
> ii) Their conduct in connection with the appeal.
> iii) *The fact that the threat of an adverse costs order did not in fact prohibit the*
> *appeal'*
> iv) The fact that a request to waive security money was refused and security was
> in fact provided.
> v) The amount raised and paid for the Appellant's own costs'.(my emphasis)

40 It seems to be common for judges to make Protective Costs Orders in one day environmental cases with an unbalanced reciprocal protection of £5,000/£30,000. Courts do not seem to investigate the extent to which the litigants may be expected to pay substantial sums to their own lawyers.

Environmental Impact Assessment Directive 85/337/EEC

41 .A recent legislative development should be noted. New regulations (TCP (EIA) R 2011) came into force on 24th August 2011 for England. Regulation 56 applies also to Wales and empowers the S of S to exempt national defence projects from EIA assessment under the amended 1999 regulations which otherwise apply.

42. It has seemed to some that the EIA process is an obstacle race[42] rather than an aid to efficient and inclusive decision making. Thus wittily Carnwath LJ characterized some challengers' irredentist approach in Jones v Mansfield [2003] EWCA Civ 1408. This may be because for many the demands of participatory democracy are faint in comparison to the traditional comforts of technocratic paternalism.

43. It is essential, however, to appreciate that the substance of the EA directives is procedural and participatory. The EIA process is designed as Lord Steyn observed in Burkett v London Borough of Hammersmith[43] [2002] UKHL 23 at [15]

> " …. to redress to some extent the imbalance in resources between promoters of major developments and those concerned, on behalf of individual or community interests, about the environmental effects of such projects."

Lord Steyn went on to say that

> "The Directive[1] creates rights for individuals enforceable in the courts: World Wildlife Fund (WWF) v Autonome Provinz Bozen (Case C-435/97) [2000] 1 CMLR 149, paras 69-71; Berkeley v Secretary of State for the Environment [2001] 2 AC 603. There is an obligation on national courts to ensure that individual rights are fully and effectively protected: see the Berkeley case, at pp 608D (Lord Bingham of Cornhill) and 618B-H".

44. If in any doubt about the need for EIA at screening or for coverage of a particular matter at scoping the safest course is always to 'include in'.

> '*Nessun maggior dolore*
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> *Che ricordarsi del tempo felice*
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> *Nella miseria;…'*[44]

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[44] 'There is no greater pain than to remember happiness in misery' Dante Inferno: Canto V:120 et seq