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# EU PUBLIC CONSTRUCTION LAW

VOJTĚCH VOMÁČKA





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# **EU public construction law**

**Vojtěch Vomáčka**

Department of Environmental Law and Land Law  
Faculty of Law, Masaryk University

## AUTHOR

Vojtěch Vomáčka is an Associate Professor and Head of Department at the Faculty of Law, Masaryk University. He also serves as a Legal Advisor to the Supreme Administrative Court of the Czech Republic. His expertise is recognised at the European level through his membership in the European Commission's expert group on access to justice in environmental matters. He is also a regular contributor to the training of judges and prosecutors for several national judicial academies as well as the Academy of European Law (ERA) in Trier.

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The book has been reviewed by:

Dr. Kleoniki Pouikli (*Utrecht University School of Law*)

JUDr. Matúš Michalovič, PhD. (*Faculty of Law, Comenius University in Bratislava*)

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# Abbreviations

**1979 Birds Directive** Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

**1985 EIA Directive** Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

**2002 EPBD** Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings

**2010 EPBD** Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast)

**2011 CPR** Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC

**2024 CPR** Regulation (EU) 2024/3110 of the European Parliament and of the Council of 27 November 2024 laying down harmonised rules for the marketing of construction products and repealing Regulation (EU) No 305/2011

**Aarhus Convention** UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

**ACCC** Aarhus Convention Compliance Committee

**Air Quality Framework Directive** Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe

**Ambient Air Quality and Resilience Directive (AAQRD)** Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe (recast)

**ARE Regulation** Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy

**Asbestos at Work Directive** Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work

**BATs** Best available techniques

**CDW** Construction and demolition waste

**CEAP** 2015 Circular Economy Action Plan [COM (2015) 614 final]

**CEN** European Committee for Standardization

**CENELEC** European Committee for Electrotechnical Standardization (*Comité Européen de Normalisation Électrotechnique*)

**CJEU** Court of Justice of the European Union

- CEMAT** European Conference of Ministers responsible for Regional Planning
- COTER** Commission for Territorial Cohesion Policy and EU Budget
- DG MOVE** Directorate-General for Mobility and Transport
- Directive on waste** Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste
- EAD** European Assessment Document
- EED** Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC
- Environmental Noise Directive** Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise
- EPCs** Energy Performance Certificates
- EPB Standards** Energy Performance of Buildings Standards
- EPBD** Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast)
- EPD** Environmental Product Declaration
- EPER** European Pollutant Emission Register
- EPRTR** European Pollutant Release and Transfer Register
- ERDF** European Regional Development Fund
- ERDF Regulation** Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund
- ERSP Charter** European Regional/Spatial Planning Charter
- ESDP** European Spatial Development Perspective
- ESPON** European Spatial Planning Observation Network
- Espoo Convention** UNECE Convention on Environmental Impact Assessment in a Transboundary Context (1991)
- ETA** European Technical Assessment
- ETSI** European Technical Standard Institute
- EUDR** Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010
- Euratom** European Atomic Energy Community
- European Climate Law** Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')
- GPP** Green Public Procurement

- IED** Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast)
- IED 2.0** Revised Industrial and Livestock Rearing Emissions Directive (2010/75/EU) as amended by Directive 2024/1785
- ILO** International Labour Organization
- INSPIRE Directive** Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)
- IPPC** Integrated Pollution Prevention and Control
- IPPC Directive** Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control
- LTRS** Long-Term Renovation Strategy
- LULUCF** Land Use, Land Use Change and Forestry
- Maastricht Treaty** Treaty on European Union (1992)
- Maritime Spatial Planning Directive** Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning
- MSP** Maritime Spatial Plan
- Nature Restoration Law** Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869
- nCEAP** 2020 new Circular Economy Action Plan [COM (2020) 98 final]
- Nitrates Directive** Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources
- NGO** Non-governmental organisation
- NZEBs** Nearly Zero-Energy Buildings
- OJ** The Official Journal of the European Union
- REACH Regulation** Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC
- RED I** Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC
- RED II** Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources
- RED III** RED II amended by Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652

- SAVE Directive** Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE)
- SEA** Strategic environmental assessment
- SEA Directive** Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment
- Seveso I Directive** Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities
- Seveso II Directive** Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances
- Seveso III Directive** Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC
- TAB** Technical Assessment Body
- TEIA** Transboundary environmental impact assessment
- TEN-E** Trans-European Energy Network
- TEN-E Regulation** Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013
- TEN-T** Trans-European Transport Network
- TEN-T Directive** Directive (EU) 2021/1187 of the European Parliament and of the Council of 7 July 2021 on streamlining measures for advancing the realisation of the trans-European transport network (TEN-T)
- TEN-T Regulation** Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU
- UK** United Kingdom
- UN** United Nations
- UNCED** United Nations Conference on Environment and Development
- UNECE** United Nations Economic Commission for Europe
- Waste Framework Directive** Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives
- WEEE Directive** Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (recast)
- WFD** Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

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3. CJEU judgment of 8 July 1987, *Commission v. Belgium* (C-247/85, EU:C:1987:339)
4. CJEU judgment of 8 July 1987, *Commission v. Italy* (C-262/85, EU:C:1987:340)
5. CJEU judgment of 13 October 1987, *Commission v. Netherlands* (C-236/85, EU:C:1987:436)
5. CJEU judgment of 27 April 1988, *Commission v. France* (C-252/85, EU:C:1988:202)
6. CJEU judgment of 15 March 1990, *Commission v. Netherlands* (C-339/87, EU:C:1990:119)
7. CJEU judgment of 30 May 1991, *Commission v Germany* (C-361/88, EU::)
8. CJEU judgment of 2 May 1996, *Commission v Belgium* (C-133/94, EU::)
9. CJEU judgment of 24 October 1996, *Kraaijeveld and Others* (C-72/95, EU::)
10. CJEU judgment of 18 December 1997, *Inter-Environnement Wallonie* (C-129/96, EU:C:1997:628)
11. CJEU judgment of 14 July 1998, *Safety Hi Tech* (C-284/95, EU:C:1998:352)
12. CJEU judgment of 16 July 1998, *Oelmühle and Schmidt Söhne* (C-298/96, EU::)
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37. CJEU judgment of 3 July 2008, *Commission v Ireland* (C-215/06, EU::)
38. CJEU order of 10 July 2008, *Aiello and Others* (C-156/07, EU:C:2008:398)
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40. CJEU judgment of 25 July 2008, *Janecek* (C-237/07, EU::)
41. CJEU judgment of 20 November 2008, *Commission v Ireland* (C-66/06, EU:C:2008:637)
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49. CJEU judgment of 15 April 2010, *Barth* (C-542/08, EU::)
50. CJEU judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU::)
51. CJEU judgment of 3 March 2011, *Commission v Ireland* (C-50/09, EU:C:2011:109)
52. CJEU judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, ::)
53. CJEU judgment of 24 March 2011, *Commission v Belgium* (C-435/09, EU:C:2011:176)
54. CJEU judgment of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU::)
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93. CJEU judgment of 21 December 2016, *Associazione Italia Nostra Onlus* (C-444/15, …)
94. CJEU judgment of 5 April 2017, *Commission v Bulgaria* (C-488/15, EU:C:2017:267)
95. CJEU judgment of 1 June 2017, *Folk* (C-529/15, EU:…)
96. CJEU judgment of 26 July 2017, *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:…)
97. CJEU judgment of 27 September 2017, *Puškár* (C-73/16, EU:…)
98. CJEU judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987)
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106. CJEU judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:…)
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108. CJEU judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, …)
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1. Case *Spain* ACCC/C/2009/36
2. Case *Armenia* ACCC/C/2009/43
3. Case *Ukraine* ACCC/C/2004/3, ACCC/S/2004/1
4. Case *Belgium* ACCC/C/2005/11
5. Case *Bulgaria* ACCC/C/2011/58
6. Case *European Union* ACCC/C/2010/54
7. Case *Netherlands* ACCC/C/2014/104
8. Case *Slovakia* ACCC/C/2009/41

# Foreword

Across Europe, few issues touch citizens' daily lives more directly than decisions about what gets built, where it is located, and how it affects the environment. Roads, bridges, housing developments, energy infrastructure, waste facilities—these are the visible expressions of law in action. And yet, as Vojtěch Vomáčka demonstrates in *EU Public Construction Law*, the legal framework that governs these decisions is anything but straightforward. It is fragmented, contested, and often hidden from view.

This book tells the story of how the European Union, without ever adopting a “common construction code,” has come to shape national planning and permitting systems more deeply than many realize. What began as isolated sectoral measures—an environmental directive here, a renewable energy target there—has, over time, accumulated into a comprehensive framework that no planner, regulator, or investor can ignore. The result is what the author aptly calls *legal dissonance*: a patchwork of ambitious but inconsistent rules that pull Member States in multiple directions at once.

For policymakers, this dissonance is not an abstract legal puzzle; it is a practical challenge with real consequences. A city that hopes to expand its housing stock may find its plans delayed by environmental impact assessments under the EIA Directive. A region eager to attract investment in renewable energy may struggle with overlapping requirements of the Renewable Energy Directive and the Habitats Directive. A government seeking EU funding for infrastructure must align with cohesion policy rules, green public procurement obligations, and energy-efficiency mandates. Each of these examples illustrates how European law is woven into the daily fabric of public construction.

One of the strengths of this volume is its ability to connect the dots. Chapter 2 shows how early efforts at a common spatial policy faltered, leaving environmental law to fill the vacuum. Chapter 3 unpacks the procedural foundations—the Environmental Impact Assessment, Strategic Environmental Assessment, and Aarhus regimes—that anchor public participation and ecological safeguards. Chapter 4 maps the substantive drivers of change, from Natura 2000 protections to the Construction Products Regulation. And Chapter 5 demonstrates how the European Green Deal is setting an entirely new course, with binding targets for restoration, digitalisation, and resilience.

These analyses matter because they equip decision-makers with the knowledge to navigate complexity. For a local mayor, understanding why EU noise directives

constrain urban development is as important as knowing which EU funds can support sustainable transport. For a national legislator, appreciating the scope of “development consent” under the EIA Directive can prevent costly litigation. For investors, the lesson is equally clear: the EU’s regulatory framework is not a peripheral constraint but a central determinant of project feasibility.

The book also does not shy away from hard truths. As Vomáčka notes, EU law has advanced sustainability, but it has also deepened the *democracy deficit*. Citizens have gained new rights to information and participation through the Aarhus Convention, yet these rights remain uneven in practice. If Europe is to achieve its climate and energy goals, it must also ensure that decision-making is transparent and accountable.

At a moment when Europe is investing billions in the green transition, this book could not be more timely. It provides a roadmap for aligning construction practices with climate goals, while warning of the pitfalls of fragmented regulation. It calls on policymakers to recognize the cumulative effect of EU rules, and on practitioners to embrace the opportunities they create. And it challenges all of us—lawyers, judges, planners, engineers, and citizens—to see public construction not as a narrow technical field but as a frontline of Europe’s future.

*EU Public Construction Law* is both a guide and a wake-up call. It reveals the invisible European layer beneath our buildings and roads, and it insists that we confront the dissonance that layer creates. In doing so, it empowers us to imagine a more coherent, democratic, and sustainable framework for the built environment.

*Jan M. Passer, Judge at the European Court of Justice*

# Chapter 1

## Introduction: The Dissonance of EU Public Construction Law

### 1.1 The Central Thesis: Legal Dissonance in a *de facto* Field of EU Law

Who holds the ultimate authority over land use in Europe? While the formal answer points to national parliaments and local planning offices, the substantive reality is that this power is now profoundly shaped by a fragmented and often dissonant European legal order that operates indirectly, without a formal mandate.

This book contends that a *de facto* field of **EU Public Construction Law** has emerged, not through deliberate design, but as the by-product of decades of uncoordinated sectoral policies. Its central characteristic, and the core thesis of this work, is a state of legal dissonance: a condition in which ambitious but conflicting EU requirements—for environmental protection, climate action, market integration—clash within the confines of national planning and permitting systems.

This book provides a comprehensive analysis of public construction law within the European Union. To be clear from the outset, there is no single EU legislative act for spatial planning or a harmonised building code. Yet, it is equally clear that European integration has revolutionised the construction industry, from the post-war industrialisation policies founded on coal and steel to the modern common market enabling the free movement of construction workers, building materials, and services.<sup>1</sup>

The EU's influence on national systems of spatial planning and construction permitting is complex, increasing, and often an unintended by-product of various sectoral measures. It is striking that, despite this profound influence, there is no comprehensive overview of these EU requirements. From a practical standpoint, therefore, it is both possible and necessary to conceptualise 'EU Public Construction Law' as the sum of this indirect regulation, which now imposes a comprehensive, albeit fragmented, set of requirements upon the Member States.

International projects and other cross-border activities have become a standard part of the European construction scene, and it is in the Union's interest to coordinate the development of its territory – especially as climate change has recently become a dominant topic in international, European, and national politics. This also applies to local politics, where it is reflected in climate policy objectives and urban land-use planning decisions, and, at the regional level, in spatial planning.

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<sup>1</sup> See Drevet, J. *Histoire de la politique régionale de l'Union européenne*. 2008, Paris: Edition Belin, 285 p.

On the one hand, EU rules may restrict specific planning initiatives; on the other hand, they may stimulate developments in the spatial planning system. Similarly, individual projects can be significantly accelerated or postponed due to EU legal requirements and funding.

The **economic and societal significance** of this field cannot be overstated. The construction sector's gross value added constitutes approximately 5.5% of the EU's GDP,<sup>2</sup> with the European construction market valued in the trillions of euros.<sup>3</sup> The trajectory of this market is now explicitly driven by EU-level mandates; with stringent energy-efficiency regulations in place, the sector is focusing on the development of energy-efficient and sustainable designs. This growing influence<sup>4</sup> is primarily channelled through the EU's established sectoral competencies.

In particular, the environmental policy (Art. 191 TFEU), energy policy (Art. 194 TFEU), and transport policy concerning projects of common interest (Arts. 171 and 172 TFEU) give substantive shape to public construction law in the Member States. These policies and their corresponding legal instruments have defined the playing field for national legislators by focusing on the impacts of construction activity and the imperatives of sustainability. A wide range of EU legislation and incentives is relevant – not only traditional regulation, but also EU funding mechanisms, as well as the agenda and discourse set by European institutions.<sup>5</sup> This relationship works in both directions. As Blaas aptly points out, *“EU-policies have a lot of spatial impacts, and the spatial structures are, at the same time, a precondition and the subject matter of various EU policies.”*<sup>6</sup>

2 Eurostat. Gross fixed capital formation by AN\_F6 asset type [online]. 2022 [accessed on: 11 February 2023]. Available at: <[https://ec.europa.eu/eurostat/databrowser/view/NAMA\\_10\\_AN6\\_\\_custom\\_1514561/bookmark/table?lang=en&bookmarkId=e05fdc50-ed14-439a-8623-c5205dc1835a](https://ec.europa.eu/eurostat/databrowser/view/NAMA_10_AN6__custom_1514561/bookmark/table?lang=en&bookmarkId=e05fdc50-ed14-439a-8623-c5205dc1835a)>.

3 EMR. Europe Construction Market Share, Size, Analysis, Trends: By End Use: Residential, Healthcare, Hospitality, Others; By Residential Buildings and Single Units: Apartments/Flats, Detached Houses, Semi-Detached, Terraced Houses, Others; Regional Analysis; Competitive Landscape; Key Trends and Developments in the Market; 2023-2028 [online]. 2023 [accessed on: 10 March 2023]. Available at: <<https://www.expertmarketresearch.com/reports/europe-construction-market/toc>>, Research and Markets. Europe Construction Market Report and Forecast 2023–2028 [online]. 2023 [accessed on: 10 March 2023]. Available at: <<https://www.researchandmarkets.com/reports/5775269/europe-construction-market-report-forecast>>.

4 See Battis, U. *Öffentliches Baurecht und Raumordnungsrecht*. 2022, Kohlhammer Verlag, p. 2: „In der EU, die auf einem Binnemarkt und ein hohes Maß an Umweltschutz und territorialem Zusammenhalt ausgerichtet ist, wird das öffentliche Baurecht zunehmend verändert, insbesondere durch die Pflicht zur Umsetzung umwelt- oder wirtschaftsrechtlicher Richtlinien.“

5 COTER. Spatial planning and governance within EU policies and legislation and their relevance to the New Urban Agenda, 2018, p. 2.

6 Blaas, W. Introduction and Summary. In: Blaas, W. (ed.) *A New Perspective for European Spatial Development Policies*. 2019, Routledge, p. 11.