

MASARYK
UNIVERSITY
MONOGRAPHS

EU PUBLIC CONSTRUCTION LAW

VOJTĚCH VOMÁČKA



MUNI
PRESS

SCIENTIA
EST
POTENTIA

MASARYK
UNIVERSITY
MONOGRAPHS
VOL. 9

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.

KEYWORDS

Public construction law; EU law; harmonisation; spatial planning; construction permitting; land use; public participation; Aarhus Convention; environmental impact assessment; Natura 2000; waste management; prevention of industrial hazards; noise pollution, maritime spatial planning; Trans-European Transport Network; energy efficiency of buildings; climate change; European Green Deal

This book will be made open access within three years of publication thanks to Path to Open, a program developed in partnership between JSTOR, the American Council of Learned Societies (ACLS), the University of Michigan Press, and the University of North Carolina Press to bring about equitable access and impact for the entire scholarly community, including authors, researchers, libraries, and university presses around the world. Learn more at <https://about.jstor.org/path-to-open/>.

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*)

© 2025 Masaryk University

© 2025 Text by Vojtěch Vomáčka

© Cover by Vojtěch Vomáčka

© Layout by Václav Mekyska

ISBN 978-80-280-0779-9

ISBN 978-80-280-0778-2 (print)

<https://doi.org/10.5817/CZ.MUNI.M280-0779-2025>

Table of contents

Abbreviations	11
List of Tables	15
List of Cases	17
Court of justice of the european union	17
Judgments and orders	17
Opinions of Advocates General	21
Aarhus convention compliance committee	22
Foreword	23
Chapter 1 Introduction: The Dissonance of EU Public Construction Law	25
1.1 The Central Thesis: Legal Dissonance in a de facto Field of EU Law	25
1.2 State of knowledge, aims, and methodology	29
1.3 Core Terminology	33
Chapter 2 The Path to Indirect Harmonisation: The Failure of a Common Spatial Policy	37
2.1 Early Supranational Ambitions: The Council of Europe and the ERSP Charter	39
2.2 The European Community's Approach: From Europe 2000 to the ESDP	41
2.3 The Sovereignty Barrier: Why Direct Harmonisation Failed	42
2.4 Public Participation in the Early Discourse	48
2.5 A New Path Forward: The Rise of Environmental Law as an Indirect Driver	49
2.6 Partial Conclusions and Takeaways	62
Chapter 3 The Normative and Procedural Framework	67
<i>Part I: The Procedural Baseline: Environmental Assessment</i>	67
3.1 Project-Level Scrutiny: The Environmental Impact Assessment (EIA) Directive	67
3.1.1 Evolution, Purpose, and Implementation Challenges	67
3.1.2 The Scope of Assessment: Defining 'Project'	73
3.1.3 The Screening Obligation: Thresholds and the Limits of Member State Discretion	78

3.1.4 The Scope of Application: Defining 'Development Consent'	81
3.1.5 Special Cases and Derogations	86
3.2 Strategic-Level Scrutiny: The Strategic Environmental Assessment (SEA)	
Directive	89
3.2.1 Purpose and Procedural Significance of the SEA	89
3.2.2 The First Condition: An Act "Required by Law"	93
3.2.3 The Second Condition: "Setting the Framework"	95
3.2.4 The Assessment of "Reasonable Alternatives"	97
3.2.5 Public Participation in the SEA	100
3.3 The Ecological Backstop: Appropriate Assessment under the Habitats	
Directive	102
3.4 Partial Conclusions and Takeaways	109
<i>Part II: The Aarhus Regime: Environmental Democracy as a Legal Mandate</i>	110
3.5 The Three Pillars in EU Law: A Piecemeal Transposition	116
3.6 Filling the Gaps: The CJEU's Role in Enforcing the Aarhus	129
3.7 Partial Conclusions and Takeaways: The Establishment of a Fragmented	
Procedural Framework	136
Chapter 4 The Substantive Drivers of Harmonisation and Dissonance	139
4.1 Driver 1: Protective Regimes and Precautionary Balancing	140
4.1.1 Nature Protection: The Substantive Obligations of the Natura 2000	
Directives	141
4.1.2 Water Protection: The Non-Deterioration Principle of the WFD	142
4.1.3 Industrial Emissions Control: The IPPC/IED Framework	151
4.1.4 Major Accident Hazards and Land-Use Planning: The Seveso	
Framework	156
4.1.5 Air Quality Protection and the New AAQRD Framework	162
4.1.6 Environmental Noise Management	165
4.1.7 Waste Management and the Circular Economy	171
4.2 Driver 2: Prescriptive Targets and Accelerated Development	176
4.2.1 Accelerating the Energy Transition: The Renewable Energy Directives	177
4.2.2 Building Trans-European Networks (TEN-T and TEN-E)	183
4.2.3 Mandating Alternative Fuels Infrastructure (The AFIR)	191
4.2.4 Mandating Building Performance: The EPBD Framework	192
4.2.5 Mandating Overall Energy Savings: The Energy Efficiency Directive	
(EED)	195
4.3 Driver 3: Harmonisation through Market Regulation	199
4.3.1 The Construction Products Regulation (CPR)	199
4.3.2 Chemical Safety: The Reach of REACH and Asbestos Regulation	202
4.3.3 Product Performance: Ecodesign and Energy Labelling	204

4.4 Driver 4: Harmonisation through Financial Conditionality and Soft Governance	206
4.4.1 Soft Governance: The Discourse of Territorial Cohesion.	206
4.4.2 Hard Governance: The Power of the EU Purse	216
4.4.3 Governance through Procurement: The Role of GPP	217
4.5 An Exception to the Rule: Direct Harmonisation of Maritime Spatial Planning	218
4.6 Partial Conclusions and Takeaways: The Overall Impact of Dissonant Substantive Drivers.	222
Chapter 5 The Green Deal Synthesis: A New Paradigm?	235
5.1 The Green Deal's Ambition: A New Legal and Economic Vision	235
5.2 New Tool 1: Proactive Ecological Restoration (The Nature Restoration Law)	237
5.3 New Tool 2: Digitalisation and Lifecycle Regulation (The CPR and DPPs)	239
5.4 New Frontiers in Regulation: Soil, Waste, and Water Resilience	240
5.5 Partial Conclusions and Takeaways: Towards a New Paradigm of Substantive Harmonisation.	243
Chapter 6 Conclusions.	245
6.1 The Enduring Dissonance	245
6.2 The Trajectory of EU Law: Towards Substantive Harmonisation and Public Empowerment.	247
6.3 The Enduring Democracy Deficit	248
6.4 The Contours of EU Public Construction Law: A Final Synthesis	249
6.5 Final Reflections and Future Challenges	254
References	257
Journal articles	257
Monographs.	266
Chapters in monographs	268
Conference proceedings	270
Policy documents and reports	270
Guidelines	273
Datasets, statistics and analyses	275
Press releases and other documents	276

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

List of Tables

Tab. 1: Evolution of noise limits for specific equipment used in construction (chapter 4.1.6)	170
Tab. 2: Targets of selected eu energy legislation relevant to public construction law (chapter 4.2)	177
Tab. 3: Main eu environmental requirements and their impact on public construction law (chapter 4.6)	225
Tab. 4: Public participation requirements of the relevant eu environmental directives (chapter 4.6)	231
Tab. 5: Eu incentives, policies and legislation relevant to public construction law (chapter 6.4)	250
Tab. 6: Main legislative requirements relevant to public construction law (chapter 6.4)	251
Tab. 7: Aims and references of the main plans or programmes mandated by eu law (chapter 6.4)	252

List of Cases

Court of justice of the european union

Judgments and orders

1. CJEU judgment of 27 March 1980, *Salumi and Others* (C-66/79, 127/79 and 128/79, EU:::)
2. CJEU judgment of 21 September 1983, *Deutsche Milchkontor and Others* (205/82 to 215/82, EU:::1983:)
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:::)
13. CJEU judgment of 29 April 1999, *The Queen v Minister of Agriculture, Fisheries and Food, ex parte Standley and Others* (C-293/97, EU:C:1999:215)
14. CJEU judgment of 16 September 1999, *WWF and Others* (C-435/97, EU:C:1999:418)
15. CJEU judgment of 21 September 1999, *Commission v. Ireland* (C-392/96, EU:C:1999:431)
16. CJEU judgment of 3 February 2000, *Dounias* (C-228/98, EU:::)
17. CJEU judgment of 15 June 2000, *ARCO Chemie Nederland and Others* (C-418/97 and C-419/97, EU:C:2000:318)
18. CJEU judgment of 4 July 2000, *Commission v Greece* (C-387/97, EU:::)
19. CJEU judgment of 19 September 2000, *Linster* (C-287/98, EU:::)
20. CJEU judgment of 7 December 2000, *Commission v. France* (C-38/99, EU:C:2000:674)
21. CJEU judgment of 24 September 2002, *Grundig Italiana* (C-255/00, EU:::)
22. CJEU judgment of 11 September 2003, *AvestaPolarit Chrome* (C-114/01, EU:C:2003:448)
23. CJEU judgment of 7 January 2004, *Wells* (C-201/02, EU:C::)

24. CJEU judgment of 7 September 2004, *Van de Walle and Others* (C-1/03, EU:C:2004:490)
25. CJEU judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU::2004:)
26. CJEU judgment of 16 September 2004, *Commission v Spain* (C-227/01, EU:C:2004:528)
27. CJEU judgment of 20 October 2005, *Commission v United Kingdom* (C-6/04, EU:C:2005:626)
28. CJEU judgment of 16 March 2006, *Commission v Spain* (C-332/04, EU::)
29. CJEU judgment of 26 October 2006, *Commission v Portugal* (C-239/04, EU:C:2006:665)
30. CJEU judgment of 9 November 2006, *Commission v Ireland* (C-216/05, EU::)
31. CJEU judgment of 1 March 2007, *KVZ retec* (C-176/05, EU:C:2007:123)
32. CJEU judgment of 13 March 2007, *Unibet* (C-432/05, EU::)
33. CJEU judgment of 10 May 2007, *Thames Water Utilities* (C-252/05, EU:C:2007:276)
34. CJEU judgment of 5 July 2007, *Commission v Italy* (C-255/05, EU:C:2007:406)
35. CJEU judgment of 18 December 2007, *Frigerio Luigi & C.* (C-357/06, EU::)
36. CJEU judgment of 28 February 2008, *Abraham and Others* (C-2/07, EU::)
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)
39. CJEU judgment of 25 July 2008, *Ecologistas en Acción-CODA* (C-142/07, EU:C:2008:445)
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)
42. CJEU judgment of 4 December 2008, *Lahti Energia* (C-317/07, EU::)
43. CJEU judgment of 30 April 2009, *Mellor* (C-75/08, EU:C:2009:279)
44. CJEU judgment of 16 July 2009, *Commission v Ireland* (C-427/07, EU:C:2009:457)
45. CJEU judgment of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening* (C-263/08, EU::)
46. CJEU judgment of 10 December 2009, *Umweltanwalt von Kärnten* (C-205/08, EU:C:2009:767)
47. CJEU judgment of 14 January 2010, *Stadt Papenburg* (C-226/08, ::)
48. CJEU judgment of 4 March 2010, *Commission v France* (C-241/08, EU:C:2010:114)
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::)
55. CJEU judgment of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU::)
56. CJEU judgment of 15 September 2011, *Franz Mücksch* (C-53/10, ECLI:EU:C:2011:585)
57. CJEU judgment of 22 September 2011, *Valčiukienė and Others* (C-295/10, EU:C:2011:608)

58. CJEU judgment of 18 October 2011, *Boxus and Others* (C-128/09, EU:::)
59. CJEU judgment of 8 November 2011, *Q-Beef and Bosschaert* (C-89/10 and C-96/10, EU:::)
60. CJEU judgment of 24 November 2011, *Commission v Spain* (C-404/09, EU:C:2011:768)
61. CJEU judgment of 15 December 2011, *Møller* (C-585/10, EU:C:2011:847)
62. CJEU judgment of 16 February 2012, *Solvay and Others* (C-182/10, EU:::)
63. CJEU judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103)
64. CJEU judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others* (C-567/10, EU:::159)
65. CJEU judgment of 19 April 2012, *Pro-Braine and Others* (C-121/11, EU:::)
66. CJEU judgment of 21 June 2012, *Sillogos Ellinon Poleodomon kai Khorotakton* (C-177/11, ::2012:)
67. CJEU judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others* (C-43/10, EU:::2012:)
68. CJEU judgment of 19 December 2012, *Commission v Italy* (C-68/11, EU:C:2012:815)
69. CJEU judgment of 15 January 2013, *Križan* (C-416/10, EU:::)
70. CJEU judgment of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166)
71. CJEU judgment of 21 March 2013, *Salzburger Flughafen* (C-244/12, EU:C:2013:203)
72. CJEU judgment of 11 April 2013, *Edwards and Pallikaropoulos* (C-260/11, EU:::)
73. CJEU judgment of 18 July 2013, *Deutsche Umwelthilfe* (C-515/11, EU:C:2013:523)
74. CJEU judgment of 3 October 2013, *Commission v Latvia* (C-267/11 P, EU:C:2013:46)
75. CJEU judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:::712)
76. CJEU judgment of 19 November 2013, *ClientEarth* (C-404/13, EU:::)
77. CJEU judgment of 19 December 2013, *Fish Legal and Shirley* (C-279/12, EU:C:2013:853)
78. CJEU judgment of 16 January 2014, *Pohl* (C-429/12, EU:::)
79. CJEU judgment of 13 February 2014, *Commission v United Kingdom* (C-530/11, EU:::)
80. CJEU judgment of 27 March 2014, *Iberdrola Distribución Eléctrica* (C-300/13, EU:C:2014:188)
81. CJEU judgment of 16 April 2015, *Gruber* (C-570/13, EU:::)
82. CJEU judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, :::)
83. CJEU judgment of 16 July 2015, *Sommer Antriebs- und Funktechnik* (C-369/14, EU:C:2015:491)
84. CJEU judgment of 6 October 2015, *East Sussex County Council* (C-71/14, EU:::)
85. CJEU judgment of 15 October 2015, *Commission v Germany* (C-137/14, EU:C:2015:683)
86. CJEU judgment of 14 January 2016, *Grüne Liga Sachsen and Others* (C-399/14, EU:::)
87. CJEU judgment of 4 May 2016, *Commission v Austria* (C-346/14, EU:::)
88. CJEU judgment of 27 October 2016, *D'Oultremont and Others* (C-290/15, :::)
89. CJEU judgment of 8 November 2016, *Lesoochranárske zoskupenie II* (C-243/15, EU:C:2016:838)

90. CJEU judgment of 10 November 2016, *Eco-Emballages SA* (C-313/15 and C-530/15, EU:C:2016:859)
91. CJEU judgment of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:::)
92. CJEU judgment of 24 November 2016, *Bund Naturschutz in Bayern and Wilde* (C-645/15, EU:::898)
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)
99. CJEU judgment of 22 February 2018, *Commission v Poland* (C-336/16, EU:C:2018:94)
100. CJEU judgment of 28 February 2018, *Comune di Castelbellino* (C-117/17, EU:C:2018:129)
101. CJEU judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others* (C-671/16, :::)
102. CJEU judgment of 7 June 2018, *Thybaut and Others* (C-160/17, EU:C:2018:401)
103. CJEU judgment of 21 June 2018, *Poland v Parliament and Council* (C-5/16, EU:C:2018:483)
104. CJEU judgment of 7 August 2018, *Prenninger and Others* (C-329/17, EU:C:2018:640)
105. CJEU judgment of 17 October 2018, *Klohn* (C-167/17, EU:::)
106. CJEU judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:::)
107. CJEU judgment of 7 November 2018, *Holohan and Others* (C-461/17, EU:C:2018:883)
108. CJEU judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, :::)
109. CJEU judgment of 8 May 2019, *Verdi Ambiente e Società (VAS) — Aps Onlus and Others* (C-305/18, EU:C:2019:384)
110. CJEU judgment of 12 June 2019, *Terre wallonne* (C-321/18, EU:C:2019:484)
111. CJEU judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533)
112. CJEU judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, :::)
113. CJEU judgment of 11 September 2019, *Călin* (C-676/17, EU:::)
114. CJEU judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:::)
115. CJEU judgment of 7 November 2019, *Flausch and Others* (C-280/18, EU:::)
116. CJEU judgment of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114)
117. CJEU judgment of 28 May 2020, *Land Nordrhein-Westfalen* (C-535/18, EU:C:2020:391)

118. CJEU judgment of 25 June 2020, *A. and Others* (C-24/19, EU:::)
119. CJEU judgment of 9 September 2020, *Friends of the Irish Environment* (C-254/19, EU:::)
120. CJEU judgment of 14 October 2020, *Sappi Austria Produktion and Wasserverband 'Region Gratkorn-Gratwein'* (C-629/19, EU:C:2020:824)
121. CJEU judgment of 14 January 2021, *Stichting Varkens in Nood and Others* (C-826/18, EU:C:2021:7)
122. CJEU judgment of 13 January 2022, *Commission v Slovakia* (C-683/20, EU:C:2022:22)
123. CJEU judgment of 24 February 2022, *Namur-Est Environment* (C-463/20, EU:C:2022:121)
124. CJEU judgment of 31 March 2022, *Commission v Portugal* (C-687/20, EU:C:2022:244).
125. CJEU judgment of 2 June 2022, *FCC Česká republika* (C-43/21, EU:C:2022:425)
126. CJEU judgment of 8 November 2022, *Deutsche Umwelthilfe (Réception des véhicules à moteur)* (C-873/19, EU:C:2022:857)
127. CJEU judgment of 17 November 2022, *Porr Bau* (C-238/21, EU:C:2022:885)
128. CJEU judgment of 22 December 2022, *Ministre de la Transition écologique and Premier ministre (Responsabilité de l'État pour la pollution de l'air)* (C-61/21, EU:C:2022:1015)
129. CJEU judgment of 25 May 2023, *WertInvest Hotelbetrieb* (C-575/21, EU:C:2023:425)
130. CJEU judgment of 6 July 2023, *Hellfire Massy Residents Association* (C-166/22, EU:C:2023:545).
131. CJEU judgment of 4 October 2024, *Friends of the Irish Environment* (C-727/22, EU:C:2024:825).
132. CJEU judgment of 8 May 2025, *Provincie Oost-Vlaanderen and Sogent* (C-236/24, EU:C:2025:321).

Opinions of Advocates General

133. Opinion of Advocate General Fenelly of 16 September 1999, *Commission v France* (C-256/98, EU:C:1999:427)
134. Opinion of Advocate General Léger of 11 January 2000, *Linster* (C-287/98, EU:::)
135. Opinion of Advocate General Stix-Hackl of 22 June 2006, *Commission v Ireland* (C-216/05, EU::006:)
136. Opinion of Advocate General Sharpston of 2 July 2009, *Djurgården-Lilla Värtans Miljöskyddsförening* (C-263/08, EU:::)
137. Opinion of Advocate General Kokott of 4 March 2010, *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:120)
138. Opinion of Advocate General Kokott of 23 September 2010, *Stichting Natuur en Milieu and Others* (C-266/09, EU:::)
139. Opinion of Advocate General Sharpston of 16 December 2010, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2010:773)
140. Opinion of Advocate General Sharpston of 19 May 2011, *Boxus and Others* (C-128/09 to C-131/09, C-134/09 and C-135/09, :::)

141. Opinion of Advocate General Kokott of 28 June 2011, *Commission v Spain* (C-404/09, :::)
142. Opinion of Advocate General Kokott of 13 October 2011, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others* (C-43/10, :::)
143. Opinion of Advocate General Kokott of 14 July 2016, *D'Oultremont and Others* (C-290/15, :::561)
144. Opinion of Advocate General Kokott of 10 November 2016, *Commission v Bulgaria* (C-488/15, EU:C:2016:862)
145. Opinion of Advocate General Kokott, 30 March 2017, *Comune di Corridonia* (C-196/16 and C-197/16, EU:::)
146. Opinion of Advocate General Bobek of 19 October 2017, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:::)
147. Opinion of Advocate General Kokott of 25 January 2018, *Inter-Environnement Bruxelles and Others* (C-671/16, EU:C:2018:39)
148. Opinion of Advocate General Kokott of 30 April 2020, *Friends of the Irish Environment* (C-254/19, :C:)
149. Opinion of Advocate General J. Kokott of 27 January 2022, *FCC Česká republika* (C-43/21, EU:C:2022:64)
150. Opinion of Advocate General Pikamäe of 3 February 2022, *Czech Republic v Poland (Mine de Turów)* (C-121/21, EU:C:2022:74)
151. Opinion of Advocate General Kokott of 21 March 2024, *Friends of the Irish Environment* (C-727/22, EU:C:2024:266).

Aarhus convention compliance committee

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 **EUPublicConstructionLaw** 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.¹

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.

¹ 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,² with the European construction market valued in the trillions of euros.³ 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 influence⁴ 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.⁵ 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.”*⁶

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>.

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 un territorialem Zussamenhalt 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.