

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

**HABILITATION THESIS: LEGAL DISSONANCE OF STRENGTHENING
HARMONISATION IN EU PUBLIC CONSTRUCTION LAW**

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ABSTRACT

The thesis determines the level of indirect harmonisation of spatial planning and construction permitting in EU law and the scope of the corresponding requirements. It focuses on the gradual development of EU law, the relationships, differences, and synergies between the various conditions to provide a more comprehensive picture, and then concentrates on the most critical issues identified, namely the interpretation of the general concepts used in environmental legislation and the explanation of the content of the public participation requirements. It also examines the interrelationship of the Aarhus Convention and EU law, emphasising the fundamental guarantees of participation in decision-making and access to justice.

Furthermore, the thesis analyses the planning and construction requirements that stem from other EU policies than environmental. Mainly, it focuses on developing the Cohesion Policy and Urban Agenda, maritime spatial planning, development of the TEN-T and TEN-E networks, building materials requirements, building energy efficiency, and promoting renewable energy.

The thesis concludes that while the EU environmental regulations set out extensive requirements, their application to spatial planning and construction permitting is only implicit and rarely explicit. EU legislation often uses a general description of the acts to be adopted but rarely the terminology typical of public construction law and rarely directly references land-use plans or building permits. Implementing the requirements in public construction law is expected and necessary but not explicitly required. The analysis also shows that the EU environmental legislation frequently supports the merging and optimisation of processes based on considerations of the feasibility of combining the obligations under different directives, which overlap in fundamental respects. However, it rarely actually attempts to synchronise requirements from different areas of regulation. The core work is left to the transposition by the Member States, which requires a considerable degree of inventiveness.

The regulatory initiatives aimed at accelerating the energy transition in Europe following the 2020 Clean Energy Package form a comprehensive set of legislation that defines European climate and energy policy much beyond the requirements of the traditional EU environmental legislation. Its implementation will affect many areas, including national long-term planning, electromobility, and energy transport. The ambition of the overall EU energy efficiency target and national contributions directly impact the aspiration of national renovation policy: the higher the targets, the more stringent the measures the Member States must adopt to reduce energy consumption in the buildings sector. A new wave of integration tendencies can be seen as promoting good practice examples in implementing sustainable urban mobility and energy. The EU policy documents emphasise the relevance of a holistic approach to both large-scale and local infrastructure planning.

Yet the EU legislation undergoing rapid changes in the wake of the European Green Deal does not seem to be developing as a coherent system. Most notably, the provisions of other EU policies than environmental policy employ a different approach to achieve their aims.

While environmental legislation often relies on protective regimes and balancing public interests in the planning and permitting procedures, climate-related legislation frequently prescribes rather precise goals

to be achieved in procedures within set time limits. Other procedural aspects or substantive issues are left aside. In comparison to environmental law, different terminology is used, which can be confusing.

Indirect measures inherently bring several barriers to implementing the EU's ambitious aims. For example, the AFIR regulation does not put forward any measures on how to achieve building a vast amount of infrastructure, nor does it deal with aspects of its operation after the infrastructure network is complete.

The lack of spatial planning standards may seem to be a gap in the development of the EU and a missed opportunity for the Member States. The policy documents will only have a limited impact as the EU lacks the competence to take further steps in spatial planning. Most notably, given the scale of its financial support and objectives, Cohesion Policy effectively contributes to the harmonisation of spatial planning, albeit not in a procedural sense. Financial or cooperation measures are only able to address new spatial challenges indirectly.

EU legislation plays a key role in reinforcing Aarhus values in practice through detailed requirements of individual directives or through direct application. However, the approach of the European Union to implementation of the public participation requirements has been piecemeal. The requirements for public participation regarding adopting plans and programmes in the recently adopted legislation are unclear or completely absent. The public is invited if the plan or programme falls under the SEA Directive. This seems contrary to the obligations that stem from the Aarhus Convention. Despite the crucial role of the EU, since 2005, the implementation measures have been kept to a minimum. Instead, the focus has been on lightening administrative burdens for industry and enterprises. This minimalistic approach and general indecisiveness towards the international requirements for broader access to justice in environmental matters has also been shared by most Member States - and this development has been counterbalanced only by the CJEU.