

# The jurisdiction of the European Court of Justice

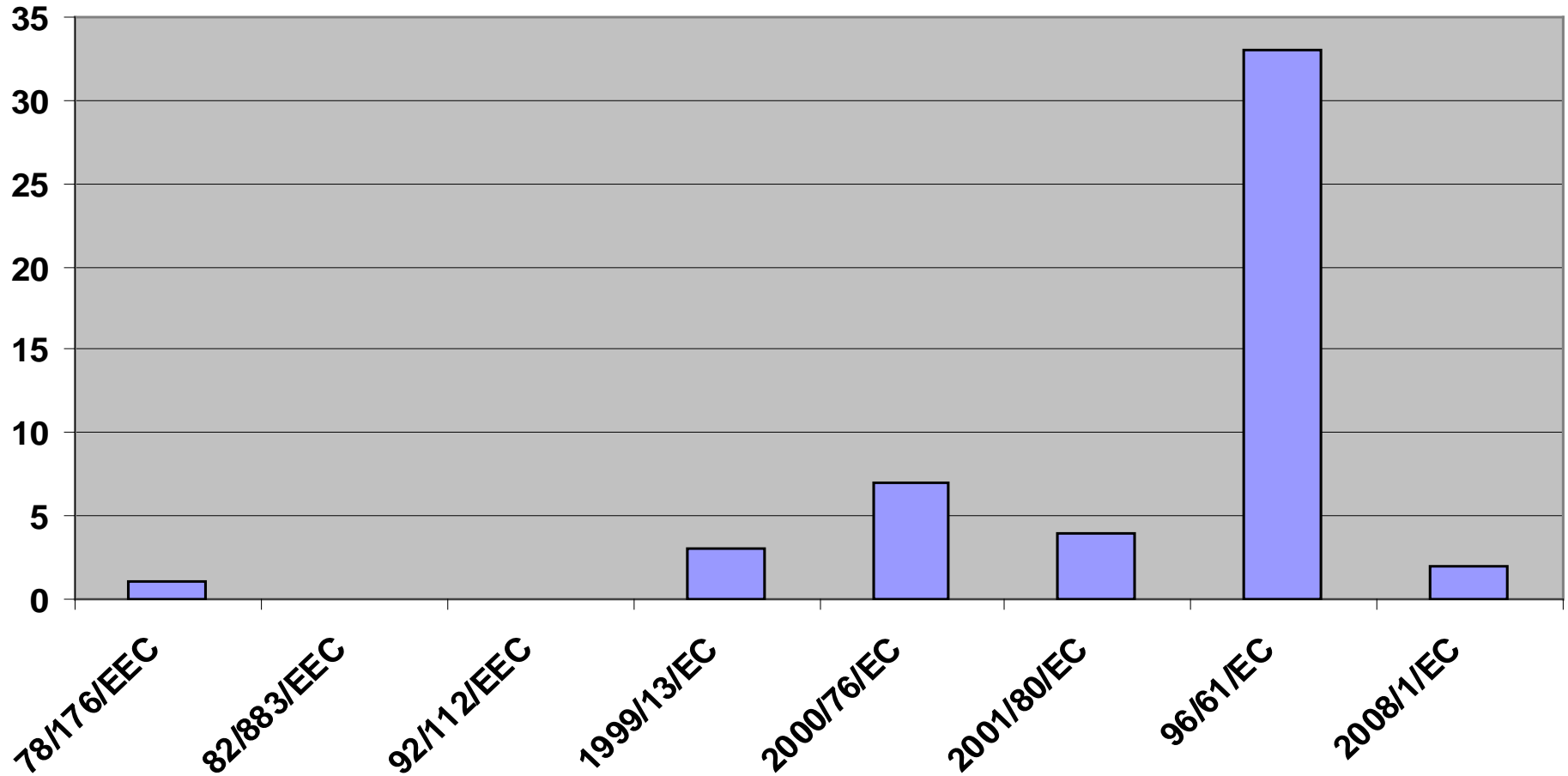
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ELNI-VMR-VVOR-congress, Ghent/Belgium,  
17 September 2010

# 1. Introduction

1. Future Industrial Emissions Directive (IED) will recast seven existing Directives related to industrial emissions into a single legislative instrument.
2. Recasted seven Directives:
  - Directives 78/176/EEC, 82/883/EEC and 92/112/EEC on waste and discards from the titanium dioxide industry
  - Directive 1999/13/EC on volatile organic compounds, Directive 2000/76/EC on the incineration of waste and Directive 2001/80/EC on pollutants emitted by large combustion plants.
  - Directive 96/61/EC (replaced by Directive 2008/1/EC concerning integrated pollution prevention and control - the IPPC Directive)
3. Focus of Presentation: Past and ongoing procedures at European Courts (Court and General Court)
4. Method: electronic search in German/English/French for judgements/orders not simply citing the Directives

## 2. Overview: 48 Court & General Court 'decisions' (no Art 260 TEU [ex-Art. 228 TEC] penalty cases)



# Directives 78/176/EEC, 82/883/EEC and 92/112/EEC on waste and discards from the titanium dioxide industry

- Directive 78/176/EEC
  - One judgement of the Court against Portugal (C-435/99)
  - Reporting duty laid down in Article 14
  - Non-communication of reports
- No started or decided court cases concerning Directives 82/883/EEC and 92/112/EEC

# Directive 1999/13/EC on volatile organic compounds

## Two judgements of the Court stating a general non-transposition

- Italia (C-348/02)
- UK (C-332/02)

## One judgement of the Court stating a non-transposition of two definitions

- France (C-443/08)
- 'small installation' and 'substantial change' (Article 2 paragraph 3 and 4)

# Directive 2000/76/EC on the incineration of waste

## Three judgements of the Court stating a general non-transposition

- Portugal (C-48/04), Italy (C-97/04), Greece (C-61/04)

## One judgement of the Court stating incorrect application with regard to Article 12

- Italy (C-255/05): availability of information to public

## Three preliminary rulings of the Court

- *Lathi*: in C-317/07 on 'waste' & 'incineration plant'; in C-209/09 on 'co-incineration plant';
- *Gävle* (C-251/07): '(co)-incineration plant'

# Directive 2001/80/EC on pollutants emitted by large combustion plants

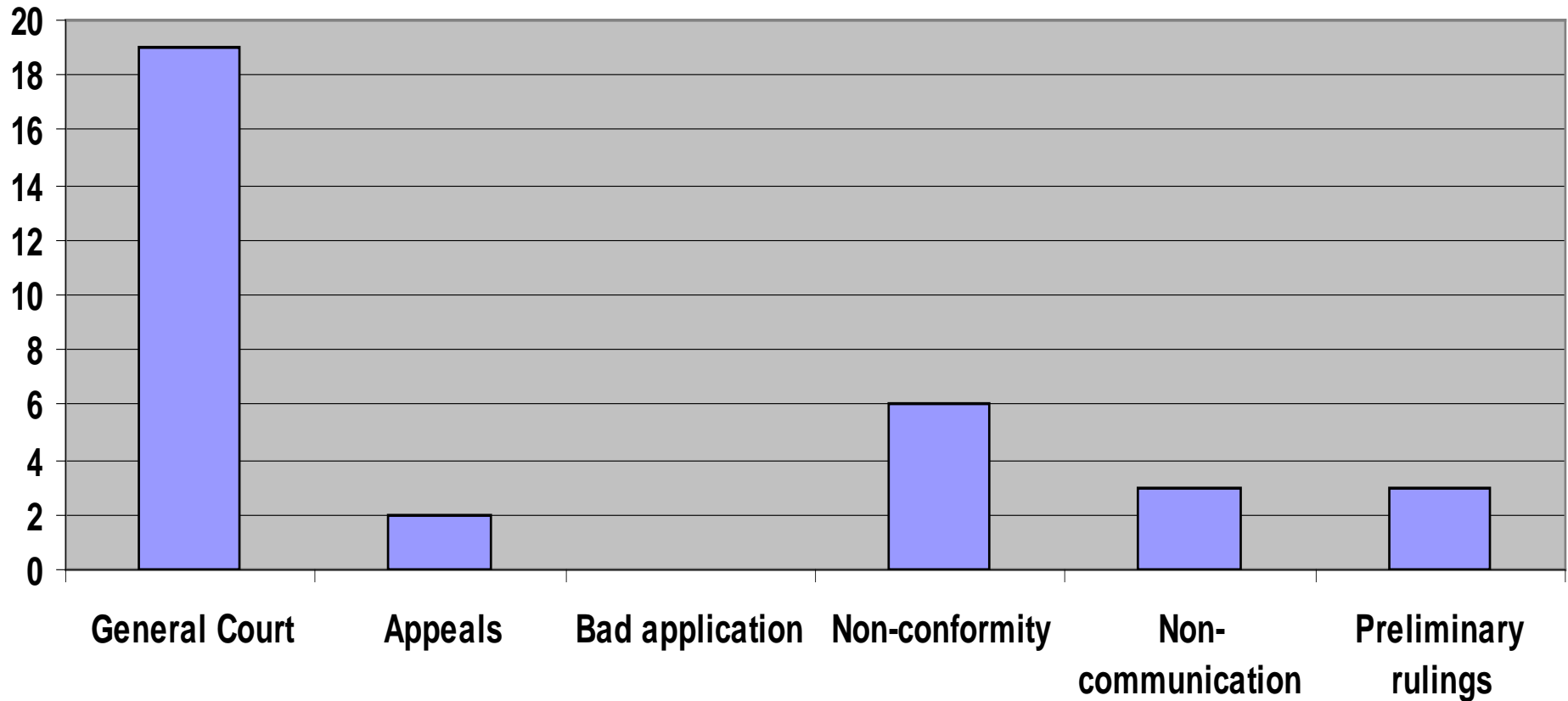
## Two judgements of the Court stating a general non-transposition

- Netherlands (C-171/04), Italy (C-99/04)

## Two judgement of the Court stating bad application

- Malta (C-252/08): Incorrect application of the emission limit values laid down in respect of sulphur dioxide, nitrogen oxides and dust regarding the plants in Delimara and Marsa
- UK (C-346/08): Non-application of the Directive on the (Rio Tinto Alcan-) plant Lynemouth

# Directive 96/61/EC - the IPPC Directive: 33 cases I





# Directive 96/61/EC - IPPC Directive: 33 cases II

## 1. Orders/Decisions of General Court (19):

- in connection with Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC
  - 4 countries as applicants (UK, D, PL, EST; all successful)
  - 15 cases with individuals as applicants (all not successful)

## 2. Unsuccessful appeals to Court (2)

- in connection with Directive 2003/87/EC (*Saint Gobain et al.*, *US Steel Košice*)

## 3. Bad application (0)

## 4. Non-conformity (6):

- A (e.g. definition “existing plants”; plant types according Annex I; BAT criteria according Annex IV; permission criteria)
- BEL incorrect + incomplete transposition; LUX less serious; FIN (2003/87/EC)
- IT & IRL in connection with public participation (Directive 2003/35/EG)

## 5. Non-communication (3):

- SP, UK, GR,

## 6. Preliminary ruling (3):

- 2 in connection with definitions of ‘incineration plant’ (*Gävle*) and ‘poultry’ (*Association nationale pour la protection des eaux et rivières - TOS et al*)
- 1 in connection with Directive 2003/87/EC (*Arcelor*)

# Directive 2008/1/EC concerning integrated pollution prevention and control

- Already two non-conformity judgements against Member States (Belgium, UK)
  - ❖ [Furthermore non-conformity cases ongoing against six Member States
    - Portugal, Spanien, Italien, Slowenien, Griechenland, Belgien
  - ❖ Three preliminary ruling cases ongoing (all Dutch concerning same national applicant)]

# 3. Conclusions

- Quite different picture in European Compliance and Enforcement concerning seven recasted Directives
- Court prevails (except at the IPPC-Directive)
- At Court no case form really prevails
- Quantitatively overwhelming is still (replaced) Directive 96/61/EC (“IPPC Directive”)
- Compliance and Enforcement regarding new IED-Directive will likely have an emphasis on IPPC-issues

# Thank you for your attention!



**Any questions?**