

The Growing Importance of Soft Law in the EU

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Tempus

INTEREULAWEAST
European and International Law Master Programme Development in Eastern Europe

Generally about Soft Law in the EU

- Trend toward flexibility and differentiation of legal instruments in the EU
- Demand for better and less legislation
- White paper on European governance and “new legislative culture” (2001)
- The beginning of tendency towards good governance and increasing use of soft law instead of hard law (alternatives)
- Notices, Resolutions, Letters, White and Green Papers, Communications, Guidelines etc...

- **Increasing use of soft law:**
 - Efficiency, transparency, legitimacy of EU legal order?
 - “un droit uncertain”, misleading concept, “grey area between law and politics”
- **Non-binding nature**
- **Two lines of understanding:**
 - Theory of binary view (relative normativity)
 - Theory of continuum view (graduated normativity)

Soft law in case law of the Court of the European Union

- **EARLY CASE LAW**

- **Ignorance**

- Case 1/71 Cadillon v. Höss (1971), 22/71 Béguelin (1971), 19/77 Miller (1978)

- Case T-310/94 Gruber + Weber (1998), T-334/94 Sarrió SA (1998), T-347/94 Mayr-Melnhof (1998).

- **LATEST DEVELOPMENTS OF COURT'S CASE LAW =
ACKNOWLEDGMENT OF EXISTENCE OF SOFT LAW AND ITS
LEGAL EFFECTS.**

- **Possible modes of consideration of soft law in Court's decisions**

- **Soft law as part of legal framework** (soft law is serving as instrument for interpretation of hard law or as a confirmation of interpretation, already given on the ground of soft law)
- **Recognition of (self-)binding effect of soft law** (soft law as a substantive rule for decision)

- **Soft law as instrument for confirmation of interpretation:** Case 136/78 Auer (1979), 71/76 Thieffry (1977), joined cases 286/82 and 26/83 Luisi and Carbone (1984), 43/72 Merkur (1973), 44/79 Hauer (1979), C-367/98 Commission v Portugal (2002), C-483/99 Commission v France (2002), C-503/99 Commission v Belgium (2002), T-229/94 Deutsche Bahn v Commission (1997), joined cases T-374/94, T-375/94, T-384/94 and T-388/94 European Night Services (1998)

- **Soft law as ground for interpretation:** Case 136/78 Auer, (1979), C-310/90 Egle (1992) , C-292/89 Antonissen (1996), C-368/96 The Queen v The Licensing Authority (1998), C-329/95 VAG Sverige (1997), C-25/94 Commission v Council (1996), C-402/03 Libertel (2006), C-356/06 Farrell (2007), T-236/07 Germany v Commission (2010), C-149/2011 Leno Merken (2012)
- **LIMITED APPROACH!**

- **Self - binding effect of soft law provisions for adopting institution**
- **Binding effect of “agreed” soft law in 2 situations:**
 - **Adoption of “agreed acts” provided in hard law** (Case C-303/90 French Republic v Commission (1991), C-325/91 French Republic v Commission (1993))
 - **Existence of special obligation of cooperation** (Case C-313/90 CIRFS (1993), C-311/94 Ijssel-Viliet (1996), T-354/05 Télévision française 1 SA (2009), T-17/02 Fred Olsen (2005))

Thank you for your attention!

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