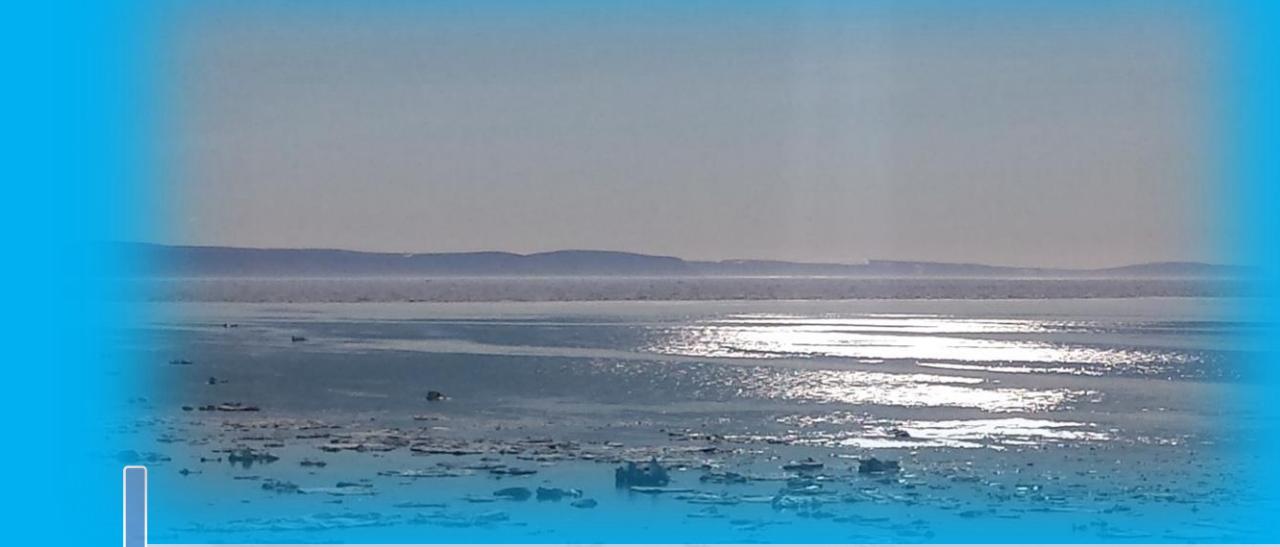


Understanding EU environmental law in the age of the Green Deal

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Friday 30 October 2020





Purpose of this talk

- Complexity of EU environmental law
- The green deal: a 'green dream'
- Aiming at zero pollution and climate neutrality
- The challenge of implementation and enforcement
- The role of procedural rights used by civil society
- Understanding EU Environmental Law

(Unavoidable) Complexity: reasons

It is not easy to regulate the environmental domain given its width

- Ecosystems contain many different (inter-linked) elements;
- Developing a truly integrated (or circular) regulatory approach is complicated and has its limits

Choice for (very) different regulatory instruments

- Command and control, market-based, information-based, liability provisions;
- But also a mix of hard and soft law approaches towards Member States

Technical law, and (in some area's) many amendments

- Example: many amendments of the EU emissions trading system

Compromises at EU level plus need for subsidiarity

- Trilogue (negotiations by EU legislative institutions);
- Implementation discretion for Member States

Tension of environmental protection with other interests

- Balancing interests – role of the courts v discretion of the legislator

The Green Deal (11.12.2019 COM(2019)640)

Ambitious policy plan of the European Commission: a dream!

Ambition of zero pollution

Climate neutrality

Rigorous enforcement (energy and climate)



Climate neutrality (as proposed)

The European Council,
in its conclusions of 12 December 2019,
agreed on the objective of achieving
a climate-neutral EU by 2050
(with one MS making a reservation for
implementation)

“Union-wide emissions and removals of greenhouse gases regulated in
Union law shall be **balanced** at the latest by 2050, thus reducing emissions to
net zero by that date.”

“The relevant Union institutions and the Member States shall take the
necessary measures at Union and national level respectively, to enable the
collective achievement of the climate-neutrality objective set out in
paragraph 1, taking into account the importance of promoting fairness and
solidarity among Member States.”

(emphasis by author) Quotes from COM(2020)80

No requirement for
national climate neutrality
in all Member States

On-going:

Proposals and policy plans to set more ambitious emission reduction targets for 2030 and 2050



Brussels, 17.9.2020
COM(2020) 562 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Stepping up Europe's 2030 climate ambition

Investing in a climate-neutral future for the benefit of our people



Brussels, 4.3.2020
COM(2020) 80 final

2020/0036 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)

**Announced, for June 2021:
Legislative proposals to implement the
more ambitious target for 2030**



Feedback period

29 October 2020 - 26

November 2020

FEEDBACK: OPEN

Main legislation for achieving emission reductions in the EU that NEEDS compliance and amendment

Effort sharing:

Binding emission reduction **targets** for member states

Emissions trading :

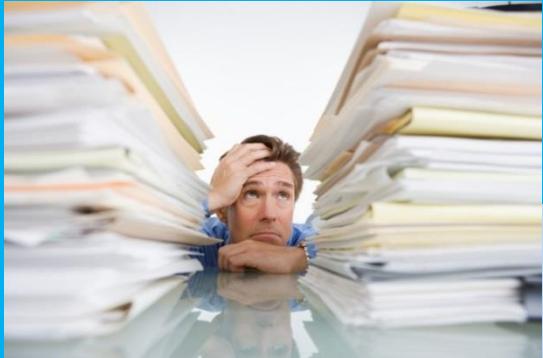
Gradual emission reduction (by means of a declining cap) obligatory for major industries and aviation (in Europe)

Other
measures

Land Use, Land Use Change and Forestry

Funding

Challenge: implementation and enforcement



A screenshot of a website. At the top is the European Commission logo and the word "ENVIRONMENT". Below that is a blue bar with the text "European Commission > Environment > Environmental Implementation Review". A dark blue sidebar on the left contains the text "Environmental Implementation Review". The main content area has a white background with the text "The Environmental Implementation Review".

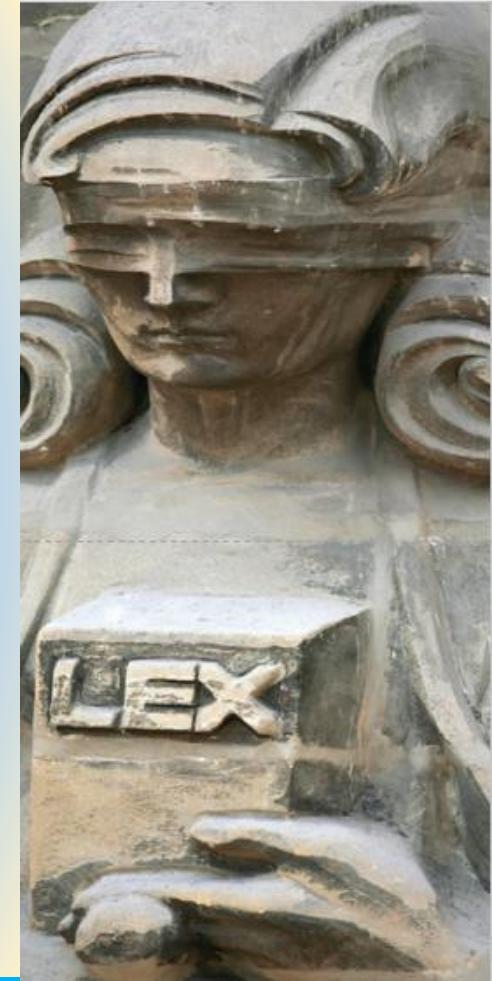
**The hard choices when implementing the law,
plus need for capacity**

Inspection and enforcement – at Member State level

Limited competences at EU level - Soft law (guidances) at EU level

Wake up call: car emissions scandal

See also for example T-751/18 - Daimler v Commission



Strong rights for ENGO's to protect the voiceless environment



- Access to information and public participation including access to justice to enforce these rights –
-> a tool for civil society to promote and check implementation and compliance
- Access to justice (9(3) Aarhus Convention)
– “members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment”
compliance by the EU ? / next slide

Recent developments article 9(3) Aarhus Convention

<https://ec.europa.eu/environment/aarhus/legislation.htm>



The screenshot shows the European Commission Environment website. The header features the European Commission logo (blue square with yellow stars) and the word 'ENVIRONMENT' in large blue letters. A green button on the right says 'New ENV website >'. The top right corner has a 'en' link. The navigation bar below the header includes 'European Commission > Environment > Legal compliance > Arrhus Convention > The EU and Aarhus >'. The main content area is titled 'The Aarhus Convention'. A sub-section titled 'The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies' is highlighted in green. Below it, a section titled 'Legislative proposal to amend Aarhus legislation' is described, mentioning the adoption of a legislative proposal on 14 October 2020 to amend the Aarhus Regulation. The proposal aims to improve public scrutiny of EU acts affecting the environment. A list of links at the bottom includes 'Proposal for a regulation on amending Aarhus regulation' and 'Communication: improving access to justice in environmental matters in the EU and its Member States'. A note at the bottom states that the legislative proposal is now with the European Parliament and the Council.

The Aarhus Convention

The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies

Legislative proposal to amend Aarhus legislation

On 14 October 2020, the European Commission adopted a legislative proposal amending the Aarhus Regulation No. 1367/2006 to allow for better public scrutiny of EU acts affecting the environment. The proposed amendments improve the possibilities to request that the EU institutions review such acts to better ensure environmental protection.

- [Proposal for a regulation on amending Aarhus regulation](#)
- [Communication: improving access to justice in environmental matters in the EU and its Member States](#)

The legislative proposal is now with the European Parliament and with the Council.

Meanwhile

Litigation against the EU and EU member states with regard to climate policies (selection)

Main legislation for achieving emission

reductions in the EU that NEEDS
compliance and amendment

Effort sharing:

Binding emission reduction
targets for member states

Emissions trading :

Gradual emission reduction (by
means of a declining cap)
obligatory for major industries
and aviation (in Europe)

Land Use, Land Use Change and
Forestry

At EU level:

Carvalho and others
(appeal)

Forest / Biomass case
(appeal)

At Member State level :

The Netherlands:
Urgenda

Ireland:
Friends of the Irish
Environment case

Germany:
Farmers and
Greenpeace v Germany

France:
The case of the century

Other....

European Convention of Human Rights – so other than EU law - but against EU Member States:

Claim of four Portuguese children / young adults against 27 Member States and 6 other European States

Next to hard climate law: the (new) governance approach to achieve climate neutrality -> Regulation 2018/1999 of 11 December 2018

Governance by means of **obligatory national integrated climate and energy plans (for 2021 to 2030)**, and national long term strategies

in order to ensure an `ongoing dialogue between the Commission and the Member States and, where appropriate, between the Member States' (para 54)

The European Energy Union and Climate Action Governance Dialogue

- Member states are obliged to develop plans – explaining their national policies- and long term strategies
- Obligatory content of the plans
- Consultation of the public has to take place

- The European Commission assesses the national plans and has the power to provide recommendations, which have to be taken in due account by Member States



Transparency
Required

Enforceability of this soft approach?

The governance approach is a truly complex framework (see annex I and II to this presentation)

The way how it will operate has yet to be proven, but some elements (such as the obligation to submit a plan, and the content it needs to discuss) seem legally enforceable

Importantly, the Commission gets the power, even **the obligation** in case the EU falls short of its aim, **to provide recommendations** to Member States, and Member states have **to take due account** (see annex II)

The Commission **shall assess** whether Member States have taken due account of certain recommendations

Future litigation in order to reach compliance and 'better' climate policies by Member States : any role for the (non-binding) recommendations?

Will the recommendations of the Commission provide some arguments for national litigation procedures trying to enforce better (including more ambitious) national policies?

- At least the judicial systems of The Netherlands and in Ireland seem to provide some opportunities given their national climate case law

This possible role of Commission Recommendations will *inter alia* depend on the level of detail with regard to how member states have to improve their policies

- But if this (very uncertain) legal effect will take place: then we see an increase of power of the European Commission, which needs to be further discussed in view of the rule of law and democracy, and its wider effect on the stability of the European Union itself – even while it is prosperous for the protection of the climate

The truth regarding understanding EU environmental law



State of Climate Law

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EU Climate Law: Largely Uncharted Legal Territory

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It is impossible for one single person to master the whole field of EU climate and energy law, **let alone environmental law**

- including its 'external integration dimension' – so the presence of environmental provisions in other domains of EU law
- and including its external dimension with third countries, and its extraterritorial reach



RESEARCH HANDBOOKS IN EUROPEAN LAW

Understanding and teaching EU environmental law

Understanding:

Specialisation is needed

Networking, cooperation is essential, also through conferences and books,
together with regular studying / training/ updating

Teaching:

1) Acquiring good knowledge of core issues, such as:

EU Competences (including more stringent national action),

Environmental procedural rights, including access to justice,

Core Regulatory Instruments and related case law,

Inspection and enforcement,

embedded into a good understanding of what the EU actually is

2) Skill development, including critical thinking, is essential !

Webinars
Online lectures

Edited by
Marjan Peeters • Mariolina Eliantonio



RESEARCH HANDBOOKS IN EUROPEAN LAW

Thank you
and stay safe!



Annex I: simplified summary of the Energy Union and Climate Action Governance Regulation (2018/1999)

The Commission may issue recommendations on the level of ambition of the draft integrated national energy and climate plans, on the subsequent implementation of policies and measures of the notified integrated national energy and climate plans, and on other national policies and measures of relevance for the implementation of the Energy Union.

‘Whereas recommendations have no binding force, Member States should nevertheless take **due account of such recommendations and explain in subsequent progress reports how they have done so.**’

If the Member State concerned does not address a recommendation or a substantial part thereof, that Member State shall **provide and make public its reasons**

In addition, the Commission **shall** as appropriate **issue recommendations** to Member States to ensure the achievement of the objectives of the Energy Union. The Commission **shall make such recommendations publicly available** (art. 34)

The Commission **shall** assess whether Member States have taken due account of these Commission recommendations (art. 13)

Annex II: some selected articles of the Governance of the Energy Union and Climate Action Regulation

Article 30

Inconsistencies with overarching Energy Union objectives and targets under Regulation (EU) 2018/842

1. Based on the assessment pursuant to Article 29, the Commission **shall issue** recommendations to a Member State pursuant to Article 34 if policy developments in that Member State show inconsistencies with the overarching objectives of the Energy Union.

Article 34

Commission recommendations to Member States

1. The Commission **shall as appropriate issue recommendations** to Member States to ensure the achievement of the objectives of the Energy Union. The Commission shall make such recommendations publicly available forthwith.

Article 13:

The Commission **shall assess** whether Member States have taken due account of the Commission recommendations issued pursuant to Article 34.

Annex III:

some examples of current consultations (Have you say) to sharpen existing climate legislation

(printscreen from announcement of 30 October 2020)

Dear Sir or Madam,

Several initiatives have been published or updated on the European Commission's 'Have your say' portal:

| | | |
|--|--|--------------------|
| <u>Land use, land use change & forestry – review of EU rules</u> | - Climate action | Inception Assessme |
| <u>Climate change – updating the EU emissions trading system (ETS)</u> | - Climate action | Inception Assessme |
| <u>CO2 emissions for cars and vans – revision of performance standards</u> | - Climate action | Inception Assessme |
| <u>Updating the list of invasive species threatening biodiversity and ecosystem services across the EU</u> | - Environment | Planned i |
| <u>Preventing illegal trade in wildlife – revision of EU action plan</u> | - Environment | Planned i |
| <u>Revision of EU Ambient Air Quality legislation</u> | - Environment | Planned i |
| <u>Forests - new EU strategy</u> | - Agriculture and rural development - Climate action - Environment | Planned i |
| <u>National emissions reduction targets (Effort Sharing Regulation) – review based on 2030 climate target plan</u> | - Climate action | Inception Assessme |

To consult all the existing initiatives please visit the portal:

<https://ec.europa.eu/info/law/better-regulation/have-your-say>

This is an automatic notification message. Please do not reply to it.

With kind regards,

European Commission
Secretariat-General