

Understanding EU environmental law in the age of the Green Deal

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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**

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

Roadmap

Feedback period

29 October 2020 - 26

November 2020

FEEDBACK: OPEN

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

Other measures

Funding

Challenge: implementation and enforcement



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 top of a European Commission website. On the left is the European Commission logo with the text 'European Commission'. In the center is the word 'ENVIRONMENT' in large blue letters. On the right is a green button that says 'New ENV website >'. Below the header is a dark blue navigation bar with white text: 'European Commission > Environment > Legal compliance > Aarhus Convention > The EU and Aarhus >'. The main content area has a white background. It starts with the title 'The Aarhus Convention' in green, followed by a horizontal dashed line. Below this is the subtitle 'The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies' in green. Then, there is a section header 'Legislative proposal to amend Aarhus legislation' in bold black. The main text paragraph states: '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.' This is followed by a bulleted list of two links: 'Proposal for a regulation on amending Aarhus regulation' and 'Communication: improving access to justice in environmental matters in the EU and its Member States'. The final sentence at the bottom reads: 'The legislative proposal is now with the European Parliament and with the Council.'

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ENVIRONMENT

New ENV website >

European Commission > Environment > Legal compliance > Aarhus Convention > The EU and Aarhus >

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

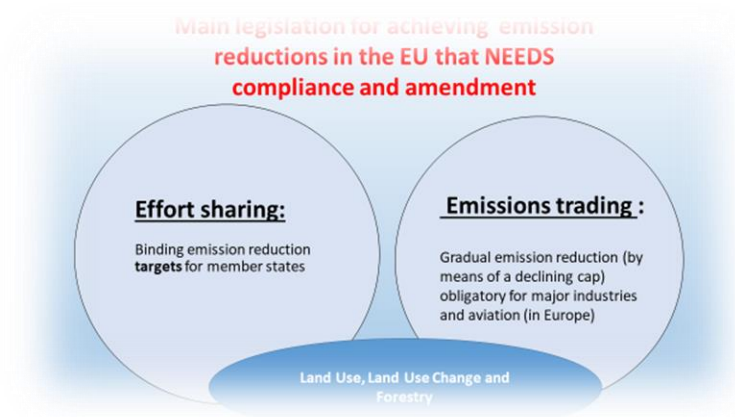
On 14 October 2020, the European Commission adopted a legislative proposal amending the Aarhus Regulation No. 1367/2006 to allow for better public scrutiny of EU acts affecting the environment. The proposed amendments improve the possibilities to request that the EU institutions review such acts to better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



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?

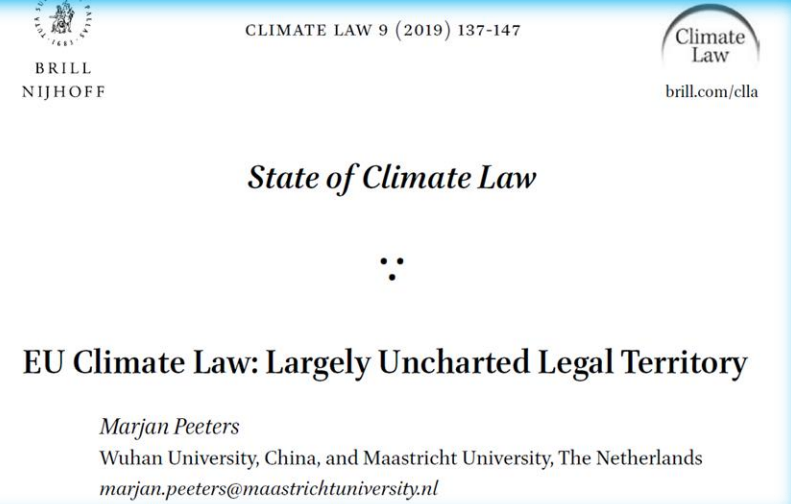
Will the recommendations of the Commission provide some arguments for national litigation procedures trying to enforce better (including more ambitious) national policies?

- **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



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

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





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

(screenshot from
announcement of 30
October 2020)

European Commission

Have your say

Dear Sir or Madam,

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

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

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