International
Comparative
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Environment & Climate Change Law 2021

A practical cross-border insight into environment and climate change law

18th Edition

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

The EU is competent to act in all fields of environmental policy, including air and water pollution, waste management and climate change. EU environment policy is based on the principle of subsidiarity and Articles 11 and 191-193 of the Treaty on the Functioning of the European Union ("TFEU"). Article 3(3) of the Treaty on the European Union ("TEU") lists *"sustainable development […] based on […] inter alia a high level of protection and improvement of the quality of the environment"* among the EU's objectives. According to Article 191 (1) of the TFEU, the EU shall contribute to: (a) preserving, protecting and improving the quality of the environment; (b) protecting human health; (c) prudent and rational utilisation of natural resources; and (d) promoting measures at an international level to deal with regional or worldwide environmental problems, in particular, combatting climate change. EU environmental policy shall be based on the precautionary principle, the polluter pays principle, and on the principle that preventive action should be taken and that environmental damage should, as a priority, be rectified at the source.

Over the last 40 years, the body of law that makes up the European environmental *acquis* has steadily expanded although in more recent years it has been reaching maturity. Nevertheless, this body of law is continually under assessment with significant developments having taken place in the chemicals sector, but also in the waste, air and water sectors.

The vast majority of EU environment legislation is in the form of Directives. In addition, the EU legislature is empowered to adopt Regulations and Decisions to implement the aforementioned principles. Currently, over 200 legal acts exist in the field of EU environmental law and climate change, covering areas such as air quality, waste management, water protection, nature protection, industrial pollution control, chemicals management, noise and greenhouse gas emissions. Other instruments deal with crosscutting issues such as environmental impact assessments, access to environmental information, public participation in environmental decision-making and liability for environmental damage. Whereas EU Regulations apply in the national legal orders of the Member States without the need for transposition, Directives aim at approximation through transposition (into national law) and implementation, of which the Member States enjoy a certain discretion. Examples of the former include the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"); examples of the latter are the Waste Framework Directive, the Air Quality Framework Directive and the Industrials Emissions Directive.

Besides these instruments, the case law of the Court of Justice of the European Union ("CJEU") is an important source of EU environmental law too.

The main driver behind the EU policy on the environment is the European Commission ("Commission"). The Commission proposes environment policies, formally adopted by the European Council and the European Parliament, and safeguards its implementation on the basis of multiannual Environment Action Programmes. As the "Guardian of the Treaties", the Commission is empowered under Article 17 of the TEU to ensure the correct application of the EU instruments in the field of environmental law. The Directorate-General for Environment is the Commission department responsible for EU policy on the environment; climate change is the responsibility of the Directorate-General for Climate Action.

On 11 December 2019, the Commission announced the European Green Deal, an ambitious agenda for the EU to become the first climate neutral continent by 2050 and to protect, preserve, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environmental risks and impacts. The European Green Deal also announced the adoption of a new Environmental Action Programme to complement the European Green Deal. On 14 October 2020, the Commission published a proposal for the Eighth Environment Action Programme "Turning the Trends Together", which will guide EU environmental policy until 2030.

This proposal calls for active engagement of all stakeholders at all levels of governance, to ensure that EU climate and environmental laws are effectively implemented, and forms the EU's basis to achieve the United Nation's 2030 Agenda and its Sustainable Development Goals. Building on the European Green Deal, it has six priority objectives: (a) achieving the 2030 greenhouse gas emission reduction target and climate neutrality by 2050; (b) enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change; (c) advancing towards a regenerative growth model, decoupling economic growth from resource use and environmental degradation and accelerating the transition to a circular economy; (d) pursuing a zero-pollution ambition; (e) protecting, preserving and restoring biodiversity, and enhancing natural capital; and (f) reducing environmental and climate pressures related to production and consumption.

Other specialised agencies and bodies play an important role in the enforcement of environmental law too. Important examples are the European Chemical Agency ("ECHA") in

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the field of chemicals and the European Food Safety Authority ("EFSA") which monitors food safety issues, in collaboration with national agencies and bodies. The European Environment Agency ("EEA") assists the Commission with providing information on the environment, which includes the 2020 State of the Environment Report.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

The enforcement of EU environmental law is primarily the responsibility of the national authorities. Therefore, the focus of the Commission is on facilitating compliance and enforcement on the national level through guidelines, better knowledge and responsiveness. Key in that regard is the 2008 Commission Communication on implementing European Community Environmental Law that sets out the Commission's enforcement strategy to tackle breaches of EU Environmental Law.

In addition, Directive 2008/99/EC defines a number of serious offences that harm the environment and requires EU countries to introduce effective and proportionate penalties constituting a deterrent for such offences, if they are committed intentionally or with at least serious negligence. These offences include: discharging, emitting or otherwise releasing dangerous materials into air, soil or water; collecting, transporting, recovering or disposing of hazardous waste; shipping noticeable quantities of waste; operating an industrial plant that conducts dangerous activities or stores dangerous substances (e.g. factories producing paints or chemicals); manufacturing, treating, storing, using, transporting, importing, exporting, or disposing of nuclear material and hazardous radioactive materials; killing, possessing or trafficking noticeable amounts of protected animal and plant species; and damaging protected habitats and producing, trading in or using substances that deplete the ozone layer (e.g. chemicals in fire extinguishers or cleaning solvents).

Specific EU instruments in the field of environmental law, such as REACH, require an effective enforcement mechanism, which include criminal sanctions too.

If a Member State fails to fulfil its obligations under EU environmental law, the Commission may bring infringement proceedings against that Member State before the CJEU on the basis of Article 258 TFEU. The Commission shall deliver a reasoned opinion on the matter first after giving the Member State concerned the opportunity to submit its observations. If the Member State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the CJEU. There are numerous examples of Member States brought before the CJEU in accordance with Article 258 TFEU.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

Regulation 1367/2006 requires the EU's institutions and various bodies to implement the obligations contained in the Aarhus Convention, i.e. to guarantee public access to information, participation in decision-making and access to justice on environmental issues. The CJEU considers access to environmental information to be an integral part of the exercise by EU citizens of their democratic rights. In principle, no interest is required to obtain environmental information.

In addition to the foregoing, the European Environment Agency provides the public with objective, reliable and comparable information on the state of the environment.

The case law of the CJEU on the admissibility of actions lodged by third parties (other than Member States and the Commission) remains restrictive, however.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

EU law does not provide for general rules on when an environmental permit is required. This is a matter of national law. Specific EU environmental regulations nonetheless contain permit obligations. The Industrial Emissions Directive, for example, requires some large-scale industrial installations to obtain an operating permit granted by the national authorities. Other pieces of EU legislation, although not entailing any explicit permit requirements, impose some form of development consent for some activities with adverse effects on the environment. Under Article 6 (3) of the Habitats Directive, for example, the competent national authorities shall agree to a plan or project only after having ascertained that it will not adversely affect the integrity of a protected site.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

EU law does not regulate the rights of applicants of an environmental permit. This remains a matter of domestic law of the Member States. However, domestic procedural rules shall not deprive EU law of its effects.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

EU law provides for a mandatory environmental assessment of certain plans and programmes ("SEA Directive") and projects ("EIA Directive"). The aim of these instruments is to ensure that environmental considerations are integrated into the preparation and authorisation of plans, programmes and projects. Environmental assessments apply to airports, nuclear installations, railways, roads, waste disposal installations, waste water treatment plants, etc.

Some EU instruments in the field of environmental law, such as the Industrial Emissions Directive, require some form of mandatory environmental reporting.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

EU law does not regulate the enforcement powers of national environmental regulators in connection with the violation of permits. This remains a matter of domestic law of the Member States.

Under the principle of sincere cooperation laid down in Article 4(3) TEU, however, Member States are required to nullify the unlawful consequences of an infringement of EU (environmental) law. The competent (environmental) authorities are therefore under an obligation to take all measures necessary, and within the sphere of their competence, to remedy the failure

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to comply with obligations under EU environmental law, for example, by revoking or suspending permits. Therefore, if the violation of a permit involves a violation of EU (environmental) law, the national (environmental) authorities will need to take appropriate action in order to put an end to that infringement.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The Waste Framework Directive is the main instrument in the field of waste management in the EU and establishes a waste hierarchy: prevention; re-use; recycling; and recovery for other purposes such as energy and disposal.

Waste is defined in the Waste Framework Directive as "*any substance, object that the holder discards, intends to discard, or is required to discard*". It does not cover certain types of waste such as radioactive elements, decommissioned explosives, faecal matter, waste waters and animal carcasses.

The Waste Framework Directive is based on the "polluter pays" principle, whereby the original waste producer must pay for the costs of waste management. It introduces the concept of "extended producer responsibility" on certain categories of waste (*infra* question 3.4), which may include an onus on manufacturers to accept and dispose of products returned after use. It furthermore incorporates certain provisions on hazardous waste (e.g., cannot be mixed or diluted), waste oils and equally includes re-use and recycling targets for, *inter alia*, paper, metal, plastic and glass.

In addition to this framework directive, there exist several legislations on specific categories, such as: the WEEE Directive (electrical and electronic equipment); the Batteries Directive; the End-of-Life Vehicles Directive; and the Packaging Waste Directive.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

In principle, any original waste producer or other holder must carry out the treatment of waste himself or have the treatment handled by a dealer, establishment or undertaking which carries out permitted waste treatment operations, or arrange for it to be disposed of by a private or public waste collector. Member States may decide that the responsibility for arranging waste management is to be borne partly or wholly by the producer of the product from which the waste came and that distributors of such product may share this responsibility. In practice, most Member States opted for a collective waste management system, based on a shared responsibility of the waste producers.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/ disappears)?

Under the Waste Frame Directive, as a general rule, the transfer of waste does not discharge the original producer or holder of the waste from its responsibility for carrying out a complete recovery or disposal operation.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

The Waste Framework Directive provides for a system of extended producer responsibility, based on the "polluter pays" principle, to strengthen the re-use, prevention, recycling and other recovery of waste. Under EU law, extended producer responsibility is mandatory within the context of: the WEEE Directive; Batteries Directive; the End-of-Life Vehicles Directive; and the Single-Use Plastics Directive. The applicable legal framework puts the responsibility for the financing of collection, recycling and responsible end-of-life disposal of WEEE, batteries, accumulators and vehicles and certain single-use plastics on the producers. The Packaging Waste Directive requires Member States to take necessary measures to ensure that systems are set up for the collection and recycling of packaging waste.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

At an EU level, the Environmental Liability Directive lays down liability rules in the aftermath of a breach of environmental law and/or permits. The cornerstone of this directive is the "polluter pays" principle, meaning that an entity causing environmental damage is liable and must take the necessary preventive or remedial action and bear all the related costs. The directive defines environmental damage as damage that significantly affects the environmental (ecological, chemical or quantitative) status of water resources, damage to land creating a significant risk to human health and damage to protected species and natural habitats that adversely affects conservation. This definition includes, among others, the discharge of pollutants into the air, inland surface water and groundwater.

The Environmental Liability Directive provides for both fault-based liability, as well as strict liability. According to this so-called faultless liability system, operators of certain listed dangerous activities – such as energy industries, production and processing of metals, mineral industries, chemical industries and waste management – are liable if a causal link is established between that activity and the environmental damage, even if the operator did not commit any wrongful behaviour. Liability in the context of environmental damage to protected species and natural habitats (or its imminent threat) caused by other activities than those listed in the directive, occurs only if the entity is at fault or negligent.

Defences for breaches of environmental law under the Environmental Lability Directive include, among others, environmental damage (or an imminent threat of such damage) caused by: (i) an act of armed conflict, hostilities, civil war or insurrection; or (ii) a natural phenomenon of exceptional, inevitable and irresistible character. Compliance with an environmental permit may equally be invoked under the Environmental Liability Directive, provided that certain conditions are met (*infra* question 4.2).

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Under the Environmental Liability Directive, Member States can permit the operator not to bear the cost of remedial action

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taken pursuant to the directive where he demonstrates that: (i) he was not at fault or negligent; and (ii) the environmental damage was caused by an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Union specified in Annex III of the directive, such as waste management operations.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Under the Environmental Liability Directive, an "operator" is defined as any legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated.

Hence, if directors and officers of corporations operate or control the occupational activity, they might qualify as "operators", and incur liability under the Environmental Liability Directive.

Liability for environmental damage can be covered by insurance (*infra* section 11).

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

EU law does not address the different implications from an environmental liability perspective of a share sale *vs.* an asset purchase. This remains a matter of domestic (corporate) law of the Member States.

Often, however, the seller remains liable for all matters concerning the business that occurred prior to the purchase under an asset deal, whereas in the case of a share deal, the buyer acquires or takes over all liabilities (no assets but shares are acquired). In practice, division or allocation of (environmental) liabilities, including soil contamination, will be settled among the parties and set out in the purchase agreement by way of stipulating it in specific guarantees, representation and warranties, often based on the findings from a due diligence investigation.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Since lenders do not operate or control the occupational activity, they will not be liable for environmental wrongdoing under the Environmental Liability Directive.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

EU environmental law does not provide for a comprehensive legal framework on soil contamination yet. Regulations in other fields such as agriculture, water, waste, chemicals, and prevention of industrial pollution nonetheless contribute to the protection of soil. Under the Industrial Emissions Directive, for example, Member States must ensure that the permit for certain listed activities includes at least the appropriate requirements ensuring protection of the soil and groundwater and periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site.

Groundwater is dealt with under the Water Framework Directive and the Groundwater Directive with the aim of achieving good quantitative and chemical status of groundwater. The Member States are the addressees of those obligations and must, *inter alia*, take appropriate measures to achieve the water quality standard and avoid a deterioration of the water quality.

As to liability for the contamination of soil and groundwater, the aforementioned framework laid down in the Environmental Liability Directive applies.

5.2 How is liability allocated where more than one person is responsible for the contamination?

The allocation of liability in case of multiple party causation falls, in principle, beyond the scope of European Law. The Environmental Liability Directive, e.g., provides that the Directive is without prejudice to any provisions of national regulation concerning cost allocation in cases of multiple-party causation.

5.3 If a programme of environmental remediation is "agreed" with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

EU environmental law does not address the question of environmental remediation agreements. This remains a matter of national law. Under the Environmental Liability Directive, however, the competent authority under domestic law may at any time require supplementary information or require the operator to take the necessary remedial measures, or give instructions to the operator as to the necessary remedial measures.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

Under the Environmental Liability Directive, an operator is not required to bear the cost of preventive or remedial actions when he can prove that the environmental damage or imminent threat thereof was caused by a third party. Member States must provide for the possibility in such cases to enable the operators to recover the costs incurred.

The question of transfer of liability must be assessed under domestic law of the Member States.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

There is no specific basis for authorities to obtain monetary damages from a polluter for aesthetic harm to public assets, such as rivers, under EU law.

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6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

As discussed in section 1 above, the focus of EU environmental law is on facilitating and promoting compliance of Member States with the applicable environmental legislations. Although the European Commission plays an important role in this regard, the national environmental regulators are the predominant actors for enforcing compliance with EU environmental law.

Recommendation 2001/331/EC nevertheless sets, in a non-prescriptive way, minimum criteria for organising, performing, following-up and publishing the results of environmental inspections in all Member States with the aim of improving compliance and ensuring that EU environment legislation is applied and implemented more consistently. The Recommendation has strongly influenced the legal framework on environmental inspections in numerous EU acts in the field of environmental law, such as the WEEE Directive.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

EU environmental law does not address the question of disclosing pollution to an environmental regulator or potentially affected third parties. This remains a matter of national law.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

EU environmental law does not provide for a comprehensive legal framework on soil contamination yet. The question remains a matter of national law.

Under the Industrial Emissions Directive, however, where certain listed activities, such as energy industries and the production and processing of metals, involve the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting the operation of an installation or before a permit for an installation is updated for the first time. Upon a definitive cessation of the activities, the operator shall assess the state of soil and groundwater contamination by relevant hazardous substances used, produced or released by the installation. Where the installation has caused significant pollution of soil or groundwater by relevant hazardous substances compared to the state established in the baseline report, the operator shall take the necessary measures to address that pollution so as to return the site to that state. In addition, where the contamination of soil and groundwater at the site poses a significant risk to human health or the environment as a result of the permitted activities carried out by the operator, the operator shall take the necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose such a risk.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

The disclosure of environmental problems, e.g. in the context of a merger and/or takeover transactions, is not subject to any specific EU legislation. There exists, however, general transparency requirements for listed companies under Directive 2004/109/EC. The information to be published is of a predominantly financial nature, such as, e.g., yearly and half-yearly financial reports, major changes in the holding of voting rights and *ad hoc* inside information that could affect the price of securities.

The latter might in theory include information related to environmental problems. In practice, especially in the context of sizable mergers and/or takeover transactions, the process of exchanging (environmental) information is organised through a due diligence investigation process.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

EU law does not prevent such indemnities to be binding among parties to the agreement. However, this does not prevent third parties from relying on the provisions of the Environmental Liability Directive to hold an operator liable for environmental damage suffered.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

Under the International Financial Reporting Standards ("IFRS"), approved by and applied within the EU, it is generally not possible to shelter environmental liabilities off balance sheet. IAS 37 provides that companies should recognise a provision in their balance sheets when: (i) an entity has a present obligation (legal or constructive) as a result of a past event; (ii) it is probable that an outflow of resources will be required to settle the obligation; and (iii) a reliable estimate can be made of the amount of the obligation. When an environmental liability arises which meets all aforementioned conditions, an example of which are clean-up costs for unlawful environmental damage, the company is therefore obliged to recognise a corresponding provision.

EU law does not address whether a company can be dissolved in order to escape environmental liabilities. This question therefore remains a matter of domestic law.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

EU environmental law does not address the question of shareholder and parent company liability for breaches of environmental law in general. This remains a matter of national law. Under the Environmental Liability Directive, however, the

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shareholder and parent company can be held liable for environmental damage if they operate or control the occupational activity, where this is provided for in national legislation.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

Directive (EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of EU law lays down common minimum standards for the protection of persons reporting, *inter alia*, breaches of EU law on protection of the environment. "Information on breaches" is defined as "*information, including reasonable suspicions, about actual or potential breaches, which occurred or are very likely to occur in the organisation in which the reporting person works or has worked or in another organisation with which the reporting person is or was in contact through his or her work, and about attempts to conceal such breaches*".

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

The possibility of filing a "class" action claim with the CJEU under EU law is limited due to the restrictive *locus standi* criteria laid down in Article 263 (4) of the TFEU and the case law of the CJEU. In 1963, the CJEU ruled in the *Plaumann & Co v Commission* case that *"persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed"*. Recently, the EU General Court applied the Plaumann-doctrine to climate litigation: *"it is true that every individual is likely to be affected one way or another by climate change, that issue being recognised by the European Union and the Member States who have, as a result, committed to reducing emissions. However, the fact that the effects of climate change may be different for one person than they are for another does not mean that, for that reason, there exists standing to bring an action against a measure of general application"*. The case is now pending before the CJEU. There is, however, currently an ongoing debate on whether the Plaumann-doctrine is compatible with the right of access to justice for the public concerned under the Aarhus Convention.

EU environmental law does not prevent punitive or exemplary damages, though the application thereof remains rare.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

There is no general rule exempting certain individuals or public interest groups from liability to pay costs when pursuing environmental litigation before the European courts. As a general rule of procedure of the CJEU, the unsuccessful party shall be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Where each party succeeds on some and fails on other heads, the parties shall bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

The EU has created the EU emissions trading system ("EU ETS") with a view of reducing greenhouse gas emissions cost-effectively. The EU ETS is a "cap and trade" system applicable to emitters of greenhouse gases from energy-intensive industries and the energy generation sector, as well as to the aviation sector.

Since 2013 (phase 3 of EU ETS), the allocation of allowances has been made on the basis of centrally approved allocation plans rather than by Member States alone. The default method for allocating allowances is now via auctions. Despite the auctioning of allowances being the intended method, the manufacturing industry continues to receive a share of allowances for free on the basis of GHG emission performance benchmarks. Sectors facing carbon leakage risks receive a higher share of the allowances for free. Currently, these free allowances are based on a preliminary calculation of the number of free allowances that should be allocated to each plant, i.e. the National Implementation Measures ("NIMs").

The legislative framework of the EU ETS for its next trading period (phase 4 2021–2030) was revised in early 2018 to enable it to achieve the EU's 2030 emission reduction targets in line with the 2030 climate and energy policy framework and as part of the EU's contribution to the 2015 Paris Agreement. To increase the pace of emission cuts, the overall number of emission allowances will decline at an annual rate of 2.2% from 2021 onwards, compared to 1.74% currently.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

No, there are no other requirements.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

The EU has subscribed to the Paris Agreement objective to keep the global temperature increase to well below 2°C and pursue efforts to keep it to 1.5°C.

In this regard, the 2030 climate and energy framework includes EU-wide targets and policy objectives for the 2021–2030 period. The key targets for 2030 are: (i) at least 40% cuts in greenhouse gas emissions (from 1990 levels); (ii) at least a 32% share for renewable energy; and (iii) at least 32.5% improvement in energy efficiency. On 17 September 2020, the Commission presented the 2030 Climate Target Plan, submitting a proposal to raise the climate ambition of the EU to a 55% cut in emissions by 2030, as a stepping-stone to the 2050 climate neutrality goal. The Commission will review all relevant climate and energy policy instruments to achieve the emissions reduction with a view to making appropriate proposals by June 2021.

To achieve these targets, the EU Member States are involved. Pursuant to Regulation 2018/1999/EU on the governance of the energy union and climate action, each EU Member State must draft an integrated National Energy and Climate Plan ("NECP") covering the five dimensions of the energy union: energy security; internal energy market; energy efficiency; decarbonisation;

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and research, innovation and competitiveness. Each Member State must also report on the progress that it makes in implementing its NECP, mostly on a biennial basis. The Commission will monitor EU progress (as a whole), notably as part of the annual state of the energy union report.

In the longer term, the European Commission intends to achieve a climate-neutral European economy by 2050. With the European Green Deal, the EU is to transform the EU into "*a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. It also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts*" (COM(2019) 640 final, p. 2.).

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

Directive 1999/77/EC banned the marketing and use of products containing asbestos, while Directive 2009/148/EC aims at enhancing the protection of asbestos-exposed workers.

European case law regarding asbestos, and the ban thereof, is limited but important, and mainly concerns the exposure of workers to this dangerous substance.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on-site?

The mere presence of asbestos is not illegal. Directive 2009/148/EC nevertheless lays down exposure limits and specific requirements with regard to safe work practices, including, in respect of: demolition, repairing, maintenance and asbestos removal work; information, consultation and training of workers; and health monitoring.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

Environmental liability insurance is an increasingly popular means of covering liability for environmental damage and harm under the Environmental Liability Directive. Insurance Europe, the European (re)insurance federation to which the national insurance associations in 37 States (including all the Member States) are members, plays an important role in this regard.

11.2 What is the environmental insurance claims experience in your jurisdiction?

We are not aware of any case law of the CJEU in the field of environmental insurance.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in environment law in your jurisdiction.

Climate change remains a top priority for the European Commission, as evidenced by the European Green Deal, presented on 11 December 2019. The European Green Deal covers all sectors of the economy, notably transport, energy, agriculture, buildings, and industries such as steel, cement, ICT, textiles and chemicals. Under the Green Deal, the European Investment Bank is set to facilitate €1 trillion in funding over the next decade and set itself the target of doubling its climate target from 25% to 50% by 2025, thus becoming Europe's climate bank. On 17 September 2020, the Commission presented the 2030 Climate Target Plan, submitting a proposal to raise the climate ambition of the EU to a 55% cut in emissions by 2030, as a stepping-stone to the 2050 climate neutrality goal. The Commission will review all relevant climate and energy policy instruments to achieve the emissions reduction with a view to making appropriate proposals by June 2021. In addition, the Commission will also review, among others, the Packaging Waste Directive, the Waste Framework Directive and the Industrial Emissions Directive.

National courts of Member States of the EU are furthermore increasingly receptive of claims against public authorities for alleged inaction in light of international and European climate and environmental obligations, as shown in the Urgenda judgment of the Dutch Supreme Court of 20 December 2019, but also in more recent examples such as the decision of the Administrative Court of Paris of 3 February 2021. There is currently a similar case pending before the CJEU (*cf. supra* question 8.5). In addition, on 2 September 2020, six Portuguese youths filed a complaint against 33 countries before European Court of Human Rights arguing that these countries violated/violate their human rights by failing to take sufficient action on climate change.

The EU continues to focus on reducing plastics, including microplastics, packaging and single-use plastics. Action on plastics was identified as a priority in the Circular Economy Action Plan. The EU Strategy for Plastics in the Circular Economy aims at transforming the way plastic products are designed, used, produced and recycled in the EU. We expect this to have a major impact on the European recycling industry in general and the plastics sector in particular.

On 27 May 2020, the European Commission presented the EU plan for economic recovery in the aftermath of the COVID-19 pandemic ("Repair and Prepare for the Next Generation"). To ensure the recovery is sustainable, even, inclusive and fair for all Member States, the European Commission proposed to create a new recovery instrument, "Next Generation EU", embedded within a powerful, modern and amended long-term EU budget. The money raised for "Next Generation EU" will be invested across three pillars, including a proposal to strengthen the Just Transition Fund up to €40 billion to assist Member States in accelerating the transition towards climate neutrality.

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