

## Recent developments at EU level

(1.1.2014 - 30.4.2015)

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### Planning for 2015

1. The Commission withdrew a proposal for waste management (OJ 2015, C 80 p.17) which itself had made in 2014 (COM (2014) 920). Elle argued that the proposal which intended to promote circular economy and increase recycling and recovery targets for different waste streams, was not ambitious enough and would be replaced, in 2015, by a better proposal.

The Commission also withdrew a proposal for taxes on cars which had been based on the CO<sup>2</sup>-emissions of cars (COM (2005) 130) and announced that it would review 16 environmental legislative texts - among them Directive 209/147 on birds and 92/43 on habitats - in order to view, whether they were still fit for helping in growth and jobs.

2. The European Council adopted the EU policy targets for climate change until 2030. they provide for a reduction of greenhouse gas emissions by 40 % (compared to 1990), a share of 27% of renewables in the total production of energy and an indicative target of 27 % energy efficiency "compared to projections".

### Horizontal issues

#### 1. Aarhus Convention-related issues

The General Court confirmed its jurisdiction according to which access to letters of formal notice (Article 258 TFEU) could be refused by the Commission, as this might disturb the atmosphere of mutual trust between the Commission and Member States (case T-538/13). The General Court also refused to allow disclosure of information to a company which wanted to know which of its daughter companies might be able to receive emission trading certificates under Directive 2003/87 free of cost (T-476/12). The Court held that the examination by the Commission of the Member State's planned attribution was not yet finished and might be disturbed by a disclosure.

The Court of Justice confirmed that Article 9(3) of the Aarhus Convention did not have direct effect. Thus, an NGO could not rely on that provision before the General Court (C-401/12P a.o.). The Court did not discuss, whether the useful effect of Article 9(3) of the Convention was not to be officially examined by the General Court.

The Court of Justice held that the UK system of judicial costs gave too much discretion to UK judges to fix these costs and did not contain sufficient guarantees to prevent excessively high costs (C-530/11), in contradiction to the requirements of Directive 2003/35.

#### 2. Environmental impact assessment

The EU adopted Directive 2014/52 amending Directive 2011/92 on environmental impact assessments of projects. Overall, the new provisions give broader room to the assessment of the project developer, who also has the possibility to request a scoping procedure. The obligations of the public authorities were reduced.

### *3. Accident prevention*

the Council adopted Directive 2014/87/Euratom, amending Directive 2009/71/Euratom on the safety of nuclear installations. this Directive is the consequence of the Fukushima accident. It slightly concretises the general safety requirements, but is much less consequent in its accident-prevention measures than, for example, the Seveso III-Directive 2012/18. The Directive's argument that the safety and the safety control of nuclear installations is of the "only" competence of operators and national authorities (Recital 5) appears untenable.

### **Biodiversity and nature protection**

1. The EU adopted Regulation 1143/2014 on invasive species. It provides for the establishment of a Union list of invasive species which shall lead to common measures against such species; the list is also filled up by Member States, but whether species are listed there, also depends on economic questions.

2. The Court held that a designated habitat could also have to be declassified, if it definitely and irreversibly lost its function within the Natura 2000-network (C-301/12). The declassification is to be decided by the Commission, on request of the Member State concerned

### **Products**

Regulation 517/2014 on fluorised greenhouse gases replaced Regulation 842/2006. It provides for a reduction of emissions of such gases by 79 % until 2030 and foresees a number of prohibitions of products containing such gases.

Directive 2015/412 allows Member States to oppose the cultivation of genetically modified plants in their territory, for reasons which are explicitly enumerated in the Directive. This right does not exist to cover risks which had already been the subject of an environmental risk assessment under Directive 2001/18.

### **Installations**

The Commission adopted Recommendation 2014/70 on fracking, where it indicated in general terms the measures which Member States should take in order to avoid risks to the environment. The recommendation was mainly chosen in order to satisfy the United Kingdom and Poland which had both strongly pleaded in favour of allowing fracking without restrictions.

### **Water**

1. Directive 2014/89 provides for the planning of the maritime space. Until 2021, Member States are asked to elaborate an integrated plan which takes into consideration the different uses of the maritime space. These plans shall be sent to the Commission. the directive hardly contains other requirements.

2. The Court of Justice found that France had not complied with the requirements of Directive 91/676 on water pollution by nitrates (C-237/12). This is already the third case, where France was found be in breach of that directive (see also C-258/00 and C-193/12), without the Commission having recurred to Article 260 TFEU.

Generally, the Commission is very generous in the enforcement of Directive 91/676, granting Member States large derogations for compliance. For example, the Netherlands which received a further derogation until 2017 for their whole territory (Decision 2014/291) benefit from such derogations since 2005. Also Ireland, Denmark, the United Kingdom and Germany have derogations for their whole territory.

### **Air pollution and noise**

1. The EU's plans to include airplanes into its system of emission trading of greenhouse gases, failed in part, due to the pressure from non-EU countries. The EU profited from negotiation within ICAO on this question to adopt Regulation 421/2014 which exempted flights from outside the EU and to places outside the EU until 2016 from the EU emission trading scheme. It is to be expected that this temporary exemption will remain permanent.

2. The Court of Justice confirmed that Directive 2008/50 on ambient air quality contained obligations of result and that the United Kingdom which did not respect the limit values of the Directive, had to adopt the necessary measures to ensure compliance (in the words of the directive) "as soon as possible" (C-404/13). The Court omitted to specify what "as soon as possible" meant in the specific case. In the meantime, though, the Supreme UK Court found that the UK had to submit a clean-up plan until the end of 2015. To what extent the UK will have to abandon its earlier plans to conform to the requirements of directive 2008/50 by 2025 or 2030, remains, though, still open.

3. Regulation 540/2014 fixes new noise restriction for new cars (72, 70 and 68 dB), which are applicable as of 2016, 2022 and 2026.

### **Waste**

The Court of Justice clarified that the closure of an unauthorised or illegal landfill is not sufficient to eliminate the breach of Directive 2008/98; the Member State must also take the necessary measures to clean up the landfill, i.e. to eliminate the deposited waste (C-137/07 and C-378/13). This judgment has considerable implications on waste management, as numerous old landfills exist in the EU which were closed but not cleaned up.