



EEL News Service

Issue 2013/05 of 3 July 2013



As of 2013 the EEL News Service can be downloaded as pdf and epub files. You can find them on the right hand side under “Downloadable documents” at the page [EEL News Service 2013](#).

Table of Contents

Case Law	2
Slurry used as fertiliser – waste or by-product?	2
Opinion Advocate General, C-113/12, <i>Donal Brady v Environmental Protection Agency</i> , 6 May 2013.....	2
The WFD, REACH and reuse of CCA treated poles.....	2
C-358/11, <i>Lapin luonnonsuojelupiiri</i> , 7 March 2013.....	2
Doubts about national-only renewable support mechanisms	2
Opinion Advocate General, Joined Cases C-204-208/12, <i>Essent Belgium N.V. v. Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt</i> , 8 May 2013.....	2
EU law regarding seals under discussion	3
T-526/10, <i>Inuit Tapiriit Kanatami and Others v European Commission</i> , 25 April 2013	3
Irish energy tax exemption for disabled persons illegal	3
C-55/12, <i>European Commission v Ireland</i> , 25 April 2013	3
Spain not complying with Water Framework Directive	4
Opinion Advocate General, C-151/12 <i>Commission v Spain</i> , 30 May 2013	4
General.....	4
EU transparency for industry, banks operating outside EU	4
New Nuclear Safety Directive	4
Climate Change	5
Anti-dumping tariffs on Chinese solar panels.....	5
World Bank Group report: ‘Turn down the heat’	5
Nature and Agriculture	6
Reformed fisheries policy established.....	6
Events	6
European Environmental Law Forum Conference	6
Conference on the Implementation and Enforcement of EU Environment Legislation “Working together to improve and innovate”.....	7
International Conference on Environmental Enforcement Networks: Concepts, Implementation and Effectiveness	7
Colofon.....	7

Case Law

Slurry used as fertiliser – waste or by-product?

Opinion Advocate General, C-113/12, [Donal Brady v Environmental Protection Agency](#), 6 May 2013

In proceedings challenging the conditions regarding the sale of slurry produced on a pig breeder's farm as fertiliser, the Supreme Court of Ireland asked the ECJ a number of questions concerning the concept of 'waste' as used in the Waste Framework Directive 75/442 (WFD). The Advocate General (AG) points out that it is for the producer of slurry to prove his intention to use it as fertiliser and to do so with a degree of certainty sufficient to dispel all reasonable doubt as to the risk of improper use. That intention will be established if the conditions laid down in the national legislation governing the exploitation of slurry as fertiliser are satisfied. It is for the national court to determine whether those conditions are sufficient to ensure, beyond all reasonable doubt, that the use of the fertiliser does not amount to the act of discarding waste. The AG further states that in the circumstances of the case, since no other applicable legislation exists, slurry does not fall outside the scope of the WFD. Finally, it is concluded that it is not compatible with EU law for a Member State to make a slurry producer liable for ensuring that a purchaser complies with the conditions which guarantee that the use of slurry as fertiliser is not harmful to the environment, provided that the slurry ceases, in functional terms, to be "waste" and is regarded as a "by-product".

The WFD, REACH and reuse of CCA treated poles

C-358/11, [Lapin luonnonsuojelupiiri](#), 7 March 2013

This case concerns the interpretation of the new Waste Framework Directive 2008/98 (WFD) and in particular the question whether it is necessary to be the holder of an environmental permit in order to use old telecommunications poles treated with a CCA (copper-chromium-arsenic) solution. Are such poles, when reused as a wood underlay, (hazardous) waste, or are they no longer waste? Regulation 1907/2006 (REACH) comes in as it authorises the use of such treated wood. The ECJ concludes that EU law does not exclude the possibility that hazardous waste ceases to be waste if a recovery operation enables it to be made usable without endangering human health and without harming the environment and, also, if it is not found that the holder of the object at issue discards it or intends or is required to discard it within the meaning of Article 3(1) WFD. This is a matter for the referring court to ascertain. Furthermore, REACH is relevant for the purpose of determining whether such wood may cease to be waste because, if those conditions were fulfilled, its holder would not be required to discard it within the meaning of Article 3(1) WFD. Articles 67 and 128 REACH must be interpreted as meaning that EU law harmonises the requirements relating to the manufacture, placing on the market or use of a substance such as that relating to arsenic compounds which is the subject of a restriction under Annex XVII REACH. The list in that provision is exhaustive in character and therefore no derogation can be applied to cases other than those referred to therein. It is for the referring court to determine whether the use of poles as an underlay does in fact come within the scope of the applications listed in that provision. Finally, the Annex brings about that the prohibition at issue must apply in any situation which, in all likelihood, will involve repeated skin contact with the treated wood (to be inferred from the specific conditions of normal use of the application to which that wood has been put).

Doubts about national-only renewable support mechanisms

Opinion Advocate General, Joined Cases C-204-208/12, [Essent Belgium N.V. v. Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt](#), 8 May 2013

The Belgian government fined Essent Belgium for failure to comply with legislation requiring electricity suppliers to purchase a certain amount of green energy from Belgian suppliers. Belgium law required

suppliers to surrender a certain quota of green certificates, which were only granted to Belgian producers of green electricity. Certificates of for instance Dutch origin, which indicate the source of electricity production, could not be used. The applicant Brussels Court asked the ECJ whether the Flemish regime could be violating directives 2001/77 on electricity from renewable energy sources and 2003/54 on the electricity market, and the prohibition of quantitative restrictions between Member States on imports, and rules on equality and non-discrimination.

The Advocate General (AG) first concluded that Article 5 Directive 2001/77/EC of the Directive provides for the mutual recognition of guarantees of origin exclusively for the purposes of providing evidence of the renewable origin of the electricity and that the Directive itself did not require guarantees of origin to be treated as equivalent to green certificates in the context of national support regimes. Still, the AG is of the opinion that national renewable support mechanisms that recognise renewable generation only when certified as originating within the Member State concerned are in breach of EU rules on the free movement of goods. The Belgium measures were considered not to be justified in the interests of the protection of the environment. Renewable electricity produced in another Member State would reduce emissions in the region concerned just as much as renewable electricity produced in the Flemish region.

EU law regarding seals under discussion

T-526/10, *Inuit Tapiriit Kanatami and Others v European Commission*, 25 April 2013

Regulation No 1007/2009 on trade in seal products (the basic regulation) establishes harmonised rules concerning the placing on the market of seal products. The Commission adopted Regulation (EU) No 737/2010 laying down detailed rules for the implementation of the basic regulation. Inuit Tapiriit Kanatami and Others brought a case before the General Court asking for the annulment of the Commission's regulation (the contested regulation). In support of their action, the applicants rely principally on a plea of the illegality of the basic regulation. They argue that it is inapplicable to the present case, which deprives the contested regulation of any legal basis and should result in its annulment. By their second plea, raised in the alternative, the applicants seek the annulment of the contested regulation on the ground of an alleged misuse of power. In its judgment, the General Court points out that the basic regulation is intended to improve the conditions for the establishment and functioning of the internal market by laying down harmonised rules for the placing on the market of seal products. According to the Court, the contested regulation was thus adopted on a correct legal basis by the EU legislature under the ordinary legislative procedure. Furthermore, the Court confirms that the objective of the basic regulation, which is the improvement of the conditions of functioning of the internal market, taking into account the protection of animal welfare, cannot be satisfactorily achieved by action undertaken only in the Member States and requires action at EU level. The General Court dismissed the action.

The regulation has also been challenged at the WTO by Canada and Norway (DS400, 401), who argued that the prohibition is unjustified, and also unfairly discriminates against their industries relative to sealing that takes place in certain EU member states. The WTO dispute panel reviewing the cases is expected to release a report later in 2013.

See also:

- [EU seal ban under the microscope once again in Geneva](#), Bridges Trade BioRes Review, Volume 7, Number 2, May 2013.

Irish energy tax exemption for disabled persons illegal

C-55/12, *European Commission v Ireland*, 25 April 2013

Did Ireland violate EU law by continuing to grant, after the expiry of a transitional period under Article 18(1) Council Directive 2003/96 on taxation of energy products and electricity, an exemption from excise duty on fuel used by disabled persons for motor vehicles? The Court pointed out that it is settled case-law that a Member State cannot plead the situation prevailing in its domestic legal order

to justify failure to observe obligations laid down by a directive. Moreover, the procedure laid down in Article 258 TFEU is based on the objective finding that a Member State has failed to fulfil its obligations under the Treaties or secondary legislation. Article 258 TFEU enables the Commission to institute proceedings for failure to fulfil obligations each time it forms the view that a Member State has failed to fulfil an obligation under Community law, without its being required to draw distinctions based on the nature or gravity of the infringement. Therefore, the action brought by the Commission must be considered to be well founded and the Court concluded that Ireland has failed to fulfil its obligations under the directive.

Spain not complying with Water Framework Directive

Opinion Advocate General, C-151/12 [Commission v Spain](#), 30 May 2013

The Commission is of opinion that Spain has failed to fulfill its obligations under Articles 4(8), 7(2) and 10(1) and (2), and Sections 1.3 and 1.4 of Annex V, of the Water Framework Directive 2000/60/EC. The Commission submits that Spain has incorrectly transposed the provisions of the Directive, as the Spanish legislation applies only to intercommunal river basins in Spain (whose waters flow through more than one Autonomous Community). Consequently, those provisions have not been transposed into Spanish law as regards intracommunal river basins (whose waters flow through only one Autonomous Community). The AG comes to the conclusion that Spain, except for Catalonia, did indeed not take the necessary measures to implement the obligations mentioned by the Commission. For Catalonia, the AG concludes that it does not comply with Articles 7(2) and 10(1) and (2) of the Directive.

General

EU transparency for industry, banks operating outside EU

The previous EEL News Service (Issue 2013/04 of May 2013) reported about the Commission proposal for a directive enhancing the transparency of certain large companies on social and environmental matters and the adoption of two resolutions by the European Parliament acknowledging the importance of company transparency on environmental and social matters. Recently, the European Parliament voted in favour of legislation which will oblige EU-listed and non-listed big oil, gas, mining and logging companies to declare payments they make in resource-rich countries. Moreover, a political agreement has been reached on a compromise text regarding stricter capital requirements for banks (the "CRD 4 package"). As a result, banks will be required to report from January 2015 onwards their profit or loss before tax, taxes, turnover, number of employees and public subsidies received for each country where they operate.

See also:

- [Oxfam applauds the European Parliament's hard fought victory for transparency in the extractives sector](#), Oxfam International, 12 June 2013.
- [Political agreement on new bank capital requirements confirmed](#), CONSILIUM, 27/03/2013.
- [EU Bank Capital Requirements Regulation and Directive](#), European Parliament News, 15-04-2013.

New Nuclear Safety Directive

Following the nuclear accident in Fukushima in March 2011, the EU heads of state and government asked the Commission, together with the European Nuclear Safety Regulators' Group, to carry out stress tests and to review the EU nuclear safety legislation. As a result, the Commission has prepared a proposal for a new Nuclear Safety Directive. By introducing a system of regular European peer reviews, increasing transparency on nuclear safety matters and strengthening the powers of national regulators, the directive aims at continuous improvement of nuclear safety across the EU. It introduces EU-wide safety objectives; sets up a European system of peer reviews of nuclear

installations; aims to increase transparency on nuclear safety matters; strengthens the role and independence of national regulatory authorities; introduces a requirement of specific safety reviews for older nuclear power plants for which a lifetime extension is considered and finally it aims to enhance on-site emergency preparedness and response, for example by implementing strict accident management guidelines and by putting in place emergency response centres which must be protected against radioactivity and earthquakes or flooding. Currently there are 132 operating nuclear reactors in 14 EU Member States, while four reactors are under construction. Furthermore, around 16 reactors are planned for the future to which the new directive will be applicable.

See also:

- [New Nuclear Safety Directive](#), Europa Press releases, 13 June 2013.
- [EU Nuclear Stress Tests: Legally binding reviews every six years](#), Europa Press releases, 13 June 2013.

Climate Change

Anti-dumping tariffs on Chinese solar panels

The European Commission has decided to impose provisional anti-dumping duties on imports of solar panels, cells and wafers from China. This decision follows a legal investigation over the past nine months (see also [EU investigates dumping of Chinese solar panels](#), EEL News Service Issue 8 of 12 October 2012). The tariffs came into on the 6 June and apply for the next six months - until the end of the full investigation at the start of December this year. At that point a decision must be taken on whether to impose permanent duties for up to five years.

As the market for and imports of solar panels in the EU is very large, the Commission considers it important for the imposed duty not to disrupt the market. Therefore, a phased approach will be followed with the duty set at 11.8% until 6 August 2013. From August 2013 on, the duty will be set at the level of 47.6% which is the level required to remove the harm caused by the dumping to the European industry. The provisional duties are lower than the 88% rate at which the panels are being dumped because the EU applies the so-called 'lesser duty rule', imposing only enough duty needed to restore a level playing field. The provisional duty, in addition to restoring fair competition, will according to the Commission ensure the continued development of an innovative green energy sector in the EU.

The European Commissioner for trade, Karel De Gucht, pointed out that the action is an emergency measure to give life-saving oxygen to a business sector in Europe that is suffering badly from the dumping. Furthermore the Commissioner added that he is of opinion that the response is balanced, legal and justified within international trade rules and designed to prevent the situation turning fatal.

See also:

- [EU imposes provisional anti-dumping tariffs on Chinese solar panels](#), Europa Press Release, Brussels, 04.06.2013.
- [Remarks by EU Trade Commissioner Karel De Gucht on the decision to impose provisional anti-dumping measures on imports of solar panels from China](#), Europa Press Release, Brussels, 04.06.2013.
- [EU to impose anti-dumping tariffs on Chinese solar panels](#), The Guardian, Brussels, 04.06.2013.
- [Pressure Mounts for EU-China Solar Solution](#), Bridges Weekly Trade News Digest, 13.06.2013.

World Bank Group report: 'Turn down the heat'

The report by the World Bank Group 'Turn Down the Heat: Climate Extremes, Regional Impacts, and the Case for Resilience' is a new report recently released and builds on a World Bank report released in 2012, which concludes the world would warm by 4 degrees Celsius above pre-industrial levels by the end of this century if we do not take concerted action now. The new report focuses on the risks of climate change to development in Sub-Saharan Africa, South East Asia and South Asia. It looks at

likely impacts of present day, 2°C and 4°C warming on agricultural production, water resources, coastal ecosystems and cities. The report states that many significant climate and development impacts are already being felt in some regions, and in some cases multiple threats of increasing extreme heat waves, sea level rise, more severe storms, droughts and floods are expected to have further severe negative implications for the poorest. Furthermore, it points out that climate related extreme events could push households below the poverty trap threshold. High temperature extremes appear likely to affect yields of rice, wheat, maize and other important crops, adversely affecting food security. Promoting economic growth and the eradication of poverty and inequality will thus be an increasingly challenging task under future climate change. The report concludes that immediate steps are needed to help countries adapt to the risks already locked in at current levels of 0.8°C warming, but that with ambitious global action to drastically reduce greenhouse gas emissions, many of the worst projected climate impacts could still be avoided by holding warming below 2°C.

See also:

- [Turn down the heat : climate extremes, regional impacts, and the case for resilience - full report](#), World Bank, 19.06.2013.

Nature and Agriculture

Reformed fisheries policy established

Between the Council of Ministers and the European Parliament an agreement is reached on a new, reformed fisheries policy for the EU. The overarching aim of the reformed fisheries policy is to end overfishing and make fishing sustainable environmentally, economically and socially. It is aimed to establish conditions for a better future for fish and fisheries, as well as the marine environment that supports them. Furthermore, the policy attempts to bring fish stocks back to sustainable levels by taking a more science-based approach to the setting of fishing opportunities. The reform will among others see a massive reduction in the wasteful practice known as discarding, which sees European fishermen throw almost 2 million tonnes of unwanted fish back into the sea each year - often dead or dying - as they seek to fill strict quotas with the most valuable species. It further intends to support sustainable sectoral growth, create job opportunities in coastal areas and ultimately provide EU citizens with a healthy and sustainable supply of fish. The reform contributes to the Europe 2020 Strategy and forms a crucial part of a push to ensure more coherent policies for the EU's seas and coastal areas by working towards robust economic performance of the industry and enhanced cohesion in coastal regions. With the new policy now agreed at political level, finalisation and formal adoption will follow in the next months. The new policy will enter into force by 1 January 2014.

See also:

- [Questions and Answers on the new, reformed Common Fisheries Policy](#), Europa Press Release, Brussels, 30.05.2013.
- [EU ministers approve crackdown on over-fishing](#), EurActiv, 30.05.2013.
- [Commissioner Damanaki welcomes agreement on reform of Common Fisheries Policy](#), Europa Press Release, Brussels, 30.05.2013.

Events

[European Environmental Law Forum Conference](#)

Building upon the experience gained in Leipzig (Germany) in 2011, the Groningen Centre of Energy Law, in cooperation with the University of Hasselt and the Helmholtz Centre for Environmental Research, organises a conference to bring together the disciplines of environmental law and energy law in order to explore and develop a workable legal concept of sustainable energy within the European Union. This conference represents the second step in the road for the establishment and functioning of the European Environmental Law Forum, which aims at supporting the intellectual exchange, the development and the implementation of Environmental Law in Europe.

Date: 4, 5 and 6 September 2013
Location: Groningen

Conference on the Implementation and Enforcement of EU Environment Legislation
“Working together to improve and innovate”

The conference is being organised by the EU Commission, IMPEL and Malta, supported by a Preparatory Committee consisting of members of IMPEL. The theme of the upcoming Conference will focus on how various stakeholders can work together to discuss the implementation and enforcement of environmental legislation so as to improve and innovate! This conference will serve as a forum for practitioners in the environmental field to share information and transfer knowledge in an informal manner, exchange experiences including discussing difficulties and sharing best practices. We hope that the upcoming conference will be another occasion to enhance the participants' knowledge and experience.

Date: 1st to 4th October 2013
Location: Malta

International Conference on Environmental Enforcement Networks: Concepts, Implementation and Effectiveness

This conference will explore in depth the potential advantages and challenges of environmental compliance and enforcement networks, formal as well as informal networks. It will assess criteria for determining a network's effectiveness from a theoretical perspective and examine the practical cases where networks have delivered measurable compliance and enforcement benefits in practice.

Date: 13-14 November 2013
Location: Brussels

Colofon

Editors-in-Chief

Wybe Th. Douma (Senior Researcher, T.M.C. Asser Instituut and Lecturer of International Environmental Law, The Hague University)

Leonardo Massai (Senior Lecturer on International and EU Environmental Law, Catholic University of Lille)

Editors

Marieke van der Kooij (T.M.C. Asser Instituut, The Hague)

Subscriptions

To (un)subscribe, please visit [this page](#).