



# EEL

EUROPEAN  
ENVIRONMENTAL  
LAW

## EEL News Service

**Issue 2015/11 of 22 July 2015**

Case Law

General

Air

Climate Change

Energy

Nature & Agriculture

Transport

Waste

Water

Events

Colofon

---

**Dear members of the EEL Network,**

The Commission has launched a summer package of proposals as a step towards implementing the Energy Union. The package includes provisions on the EU ETS, energy efficiency labelling, a new electricity market design and a new deal for energy consumers. Find more information [here](#) and in the **Energy** section below.

### **TEL (Transnational Environmental Law) Journal [Call for Papers](#), 5th Anniversary Issue**

TEL invites submissions that explore differentiation in transnational environmental law, covering both the evolving understanding of 'common but differentiated responsibilities' in the context of international climate change law and the relation between transnational governance and differentiation generally. Successful submissions will be published in the TEL anniversary issue and a prize will be awarded for innovative scholarship.

150-250w abstract to [TEL@cambridge.org](mailto:TEL@cambridge.org) by 30 September 2015

Completed articles (8000-11000w) and commentaries (3000-6000w) by 31 January 2016 via [TEL's online platform](#).

---

## **Case Law**



### **Initiated Proceedings**

#### **European Commission Press Release: [Commission refers Spain to Court over illegal landfills](#) (16/07/2015)**

The Commission is taking Spain to the CJEU over poor waste management in the regions of Andalusia, Balearic Islands, Canary Islands, Castile-La Mancha, Castile and León and Murcia. Despite earlier warnings from the Commission, Spain has failed to take measures to close, seal and ecologically restore 61 illegal landfills, as laid down by the Waste Framework Directive (2008/98/EC).

## General Court of the European Union

### Case T-312/14 *Federazione nazionale delle cooperative della pesca (Federcoopescas) and Others v Commission* (07/07/2015)

This case was brought by several Italian fishermen's associations, seeking the annulment of Commission Decision C(2013) 8635 which had introduced an action plan to rectify shortcomings in the Italian fisheries control system. The Commission's action plan was the result of an enquiry into Italy's compliance with certain rules of the Common Fisheries Policy, notably in relation to species of Highly Migratory Fish in the Mediterranean, and of the persistent irregularities despite the Commission's notification and an administrative enquiry carried out by Italian authorities.

The General Court dismissed the action for annulment, and clarified the scope of Article 263 TFEU. Non-privileged applicants (i.e. not having automatic standing) can bring an action for annulment in three situations: 1) the act in question addresses the applicant, 2) the act in question is of direct and individual concern to the applicant, or 3) the act in question is a regulatory act which is of direct concern to the applicant and which does not entail implementing measures (this latter option having been added by the Lisbon Treaty).

The General Court observed that the fishermen's associations would have to be directly concerned, notably changing the applicant's legal position, by the Commission Decision in order to have standing under the second and third situation. Since the Commission did not have any powers to adopt unilateral acts which are directly applicable to professionals in the fisheries sector, and could only draw up a binding action plan with a set of measures which Italy must implement, the act in question did not itself alter the legal position of professionals in the fisheries sector and thus the applicants did not have standing under Article 263 TFEU.

The Court held that the decision did not concern the fishermen's associations individually since, firstly, the decision applied to objectively determined situations (the fishermen represented by the associations are affected in the same way as any other economic operator actually or potentially in the same situation) and, secondly, it produced legal effects with respect to categories of persons generally and in the abstract (the current list of vessels flying the Italian flag authorised to fish for swordfish includes more than 7 300 vessels).

---

## Court of Justice of the European Union

### Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland* (01/07/2015)

The Bundesverfassungsgericht (Federal Constitutional Court of Germany) made a request for a preliminary ruling on the interpretation of Article 4(1) (a)(i) to (iii) of

Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water Framework Directive). The request was made in conjunction with a case concerning a planning approval for three projects to develop the river Weser in the north of Germany. The projects would deepen parts of the river Weser in order to enable larger container vessels to call at the Bremerhaven, Brake and Bremen ports. Implementing the projects involved dredging the riverbed in the channels and it would lead to morphological consequences, such as changing the speed of tidal rises and ebbs, changing the tidal water levels, increasing salinity and silting-up the riverbed.

Before granting planning approval, the competent federal authority had examined whether the projects were compatible with the objective of the Water Framework Directive. It had concluded that although the projects would adversely modify the bodies of water, they would not result in a change in the status class of the bodies of water in accordance with Annex V and thus they would not cause a 'deterioration of the status' of the bodies of water within the meaning of Article 4(1)(a)(i). Alternatively, the federal authority argued that the conditions for a derogation under Article 4(7) had been met. Bund für Umwelt und Naturschutz Deutschland eV challenged the planning approval, pleading that the approved projects did not comply with the Water Framework Directive.

The CJEU held that the ultimate objective of the Water Framework Directive is to achieve, by coordinated action, 'good status' of all EU surface waters by 2015. In order to achieve that goal, Member States must 'implement the necessary measures to prevent deterioration of the status of all bodies of surface water (art 4(1)(a)(i)) and protect, enhance and restore all bodies of surface water with the aim of achieving good status by the end of 2015 (art 4(1)(a)(ii) and (iii)). The obligation to prevent a deterioration of the status of bodies of surface water remains binding at all stages of implementation. Thus, unless a project is covered by a derogation under Article 4(7), Member States must refuse authorization for an individual project where it would cause a deterioration of the status of a body of water, or jeopardise the attainment of good surface water or of good ecological potential and good surface water chemical status.

The Court rejected the competent federal authority's interpretation of 'deterioration of the status' of a body of surface water (art 4(1)(a)(i)), concluding that there is a deterioration "as soon as the status of at least one of the quality elements, within the meaning of Annex V to the Directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole". If the quality element concerned is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of the body of surface water (art 4(1)(a)(i)).

### **Case C-360/14 P Germany v Commission** (09/07/2015)

Directive 2009/48/EC on the safety of toys, sets limit values for certain chemical substances found in toys. Germany considered that the limit values it applied for lead, barium, antimony, arsenic and mercury, in line with the former Directive (88/378/EEC), offered better protection than Directive 2009/48/EC and thus it requested permission from the Commission to retain these old limit values. The Commission rejected Germany's request in relation to antimony, arsenic and mercury, and Germany decided to go before the General Court to challenge the Commission's decision. The General Court upheld the Commission's decision, concluding that Germany had not proven that its limit values guaranteed a higher level of protection than the new European limit values in relation to antimony, arsenic and mercury.

The CJEU, on appeal, confirmed that while Member States can justify the retention of pre-existing national provisions, they must show that those national provisions ensure a higher level of protection of public health than the EU's harmonization measure (relying on Case C-3/00 Denmark v Commission). The General Court had not erred in law; because Germany had not provided evidence to show that its national provision ensured a higher level of protection of public health, it could not retain its national provision.

---

## **General**



**European Commission Press Release:** [Building an environmental, economic, socially just future: The EU perspective on Sustainable Development Goals](#) (06/07/2015)

Karmenu Vella, Commissioner for Environment, Maritime Affairs and Fisheries' speech at the UN High Level Political Forum on Sustainable Development.

**European Commission Press Release: [EU leads in mobilising resources for sustainable development](#)** (13/07/2015)

EU Commissioner for International Cooperation and Development, Neven Mimica, attended the Third International Conference on Financing for Development in Addis Ababa, Ethiopia. The EU is currently the largest donor of Official Development Assistance.

Financing Sustainable Development After 2015:

[Illustrations of Key EU Contributions/Key EU Contributions Infograph](#)

---

**EurActiv Article: [Environment is main challenge for Luxembourgish Presidency](#)** (08/07/2015)

Air quality, energy policy, the Circular Economy, the new Common Fisheries Policy and the 2030 Climate and Energy Package are among the main challenges facing Luxembourg, which assumed the rotating presidency of the Council of the EU on 1 July.

---

## Air



**European Parliament Press Release: [Environment MEPs call for tougher new national caps on pollutants](#)** (15/07/2015)

Environment MEPs tightened up Commission plans and called for more ambitious national caps on emissions of six main pollutants (mercury, sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, methane, ammonia and particulate matter) in order to cut emissions by 70% across the EU and save €40bn in air pollution costs by 2030. MEPs also want to include emissions reduction ceilings on mercury, and a midpoint target for most caps of 2025.

**EurActiv Article:** [Spectre of better regulation haunts air pollution bill](#) (16/07/2015)

Julie Girling's report on the National Emissions Ceiling Directive was narrowly passed by the Environment Committee. 38 voted in favour, 28 against, and two abstained. Girling voted against her own report, in light of revision made to it. While environment and health campaigners were pleased with the outcome, Girling and others expressed concern that it would be difficult to pass the proposal into law and that it is at odds with the Better Regulation strategy.

---

**EurActiv Article:** [Air pollution costs France €100 billion per year](#)

The French Senate has called for new efforts to tackle air pollution, arguing it inflates healthcare costs and reduces economic productivity and agricultural yields.

---

## Climate Change



**European Parliament Press Release:** [Parliament adopts CO2 market stability reserve](#) (08/07/2015)

A reform of the EU Emissions Trading Scheme (ETS) called the Market Stability Reserve was endorsed by Parliament on the 8 July 2015. The reform will allow ETS allowances to be taken off the market and placed in a reserve if the surplus exceeds a certain threshold. The reform is intended to reduce the surplus of carbon credits available for trading in order to support the price of the emission rights. It must be approved by the Council of ministers in September.

**energypost Article:** [So we are reforming the ETS. Now what do we want it to do?](#) (08/07/2015)

"It would be a mistake to believe that a "reformed" EU Emission Trading Scheme (ETS) would be a sufficient instrument for the decarbonisation of the EU economy, writes Oliver Sartor of the Institute for Sustainable Development and International Relations (IDDRI) in Paris."

A [study](#)) published last week by Climate Strategies concluded that, while there is an important role for the carbon market to play in driving high carbon assets out of the power mix, the carbon market is likely to be highly inefficient at driving mature low-carbon technologies into the power mix.

**EurActiv Article:** [MEPs clear reform of carbon market](#) (09/07/2015)

**EurActiv Press Release:** [Poorer EU nations get carbon money for backing 40% emissions cut](#) (15/07/2015)

As part of the reforms of the EU ETS, poorer EU countries will be given financial support through the Modernisation Fund to modernise their energy infrastructure, in return for backing a binding 40% greenhouse gas reduction target last October. An Innovation Fund will also be set up to support breakthrough investments in renewable energy, low carbon innovation in energy intensive industries and carbon capture and storage (CCS).

**EurActiv Article:** [ETS reform: EU tightens screw on 'carbon leakage' handouts for polluting industries](#) (15/07/2015)

The European Commission plans to reduce the number of free allowances and the number of industries that qualify for them. It is also speeding up the annual rate at which it reduces allowances, compared to the current ETS trading period. 6.3 billion allowances (43%) will go to industry in free allocations, worth an estimated €160 billion. Those will be divided out, with the most efficient companies being prioritised. So the best performing companies will still get the benefit of free allowances. Less efficient business will have to buy permits, incentivising them to improve their efficiency and cut emissions.

---



**energypost Article:** [Non-state actors account for growing share of emission reductions](#) (13/07/2015)

"International climate initiatives by non-state actors account for roughly half of the emission reductions pledged by governments, according to conservative calculations made by consultancy Ecofys. Cities and regions provide the larger part of these efforts, companies about a quarter. That is not yet enough to bridge the gap to the reductions that are needed, but there is scope for a further increase, write Rolf de Vos and Kornelis Blok of Ecofys."

---

**European Commission News:** [Council adopts ratification of second phase of Kyoto Protocol](#) (14/07/2015)

The Council adopted the instruments necessary for the European Union to formally ratify the second commitment period of the Kyoto Protocol. The Council adopted a [Decision on the ratification of the Doha amendment](#) to the Kyoto Protocol and a [Decision on the agreement between the EU, its Member States and Iceland](#).

---

## Energy



**EurActiv Article:** [MEPs weaken efficiency target in circular economy resolution](#) (09/07/2015)

Members of the European Parliament voted in favour of a resolution on the new package of EU waste, recycling and incineration laws including voluntary rather than binding resource efficiency targets. The same resolution called for more stringent environmental reporting rules to be imposed on national governments.

**EurActiv Article:** [New energy efficiency rules for public buildings risk being ignored](#) (09/07/2015)

European Union rules requiring higher energy efficiency standards now applying to public buildings at risk of being ignored as they rely entirely on reporting requirements rather than compliance.

---

**energypost Article:** [Europe's gas demand is falling. Doesn't anybody notice?](#) (09/07/2015)

"Gas demand has consistently been overestimated by EU bodies in recent years, write Dave Jones of Sandbag and Jonathan Gaventa and Manon Dufour of E3G. Even today, with gas demand at its lowest since 1995, the possibility of lower future demand is hardly taken into account. As a result, the EU's energy security strategy, focused on sourcing more gas, may be misguided. In addition, infrastructure investment may be wasted. Time for a reality check."

---

**European Commission Press Release:** [Central Eastern and South Eastern European countries join forces to create an integrated gas market](#) (10/07/2015)

15 EU and Energy Community countries in the Central Eastern Europe and South East European regions have signed a Memorandum of Understanding and Action Plan, agreeing to work together to accelerate the building of missing gas infrastructure links in the region and to tackle the remaining technical and regulatory issues which hamper security of supply and the development of a fully integrated and competitive energy market in the region.

---

**European Commission:** [EU to invest €150 million in energy infrastructure](#) (14/07/2015)

EU countries have agreed to invest a total of €150 million for 20 cross-European energy infrastructure projects, mainly in Central Eastern and Southern Eastern Europe, and the Baltics. The projects will increase energy security by contributing to the completion of an EU energy market and increasing the integration of renewable energy on the electricity grid. They will also help end the energy isolation of some EU countries from Europe-wide energy networks.

---

**European Commission Press Release: [Transforming Europe's energy system - Commission's energy summer package leads the way](#) (15/07/2015)**

The Commission's summer package for its Energy Union strategy includes proposals to deliver a new deal for energy consumers, to launch a redesign of the European electricity market, to update energy efficiency labelling and to revise the EU Emissions Trading System.

Read more about [the new electricity market design](#) and [the public consultation](#) and take part [here](#).

Read more about the [proposals to make energy efficiency labeling clearer](#), including a [review of the Energy Labeling Directive \(2010/30/EU\)](#) and the [proposal for a Regulation setting a framework for energy efficiency labeling and repealing Directive 2010/30/EU](#).

Read more about the [new deal for energy consumers](#)

See the [overview of the EU ETS \(Directive 2003/87/EC\) revision proposal](#), the [proposal to amend EU ETS \(Directive 2003/87/EC\) in full](#) and the [questions and answers on the proposal](#).

---

**EurActiv Article: [Commission mulls relaxing VAT rules for energy efficiency in buildings](#) (15/07/2015)**

The European Commission is considering whether to relax VAT rules for energy efficiency in buildings, after EU judges ruled a British lower rate for materials such as insulation and solar panels illegal. Energy and Climate Commissioner Miguel Arias Cañete was speaking after the CJEU ruled that the United Kingdom's Green Deal initiative to reduce value added tax (VAT) on building materials for efficiency renovation to 5% illegal.

---

**EurActiv Article: [Energy providers sue Commission over Hinkley Point subsidy](#) (16/07/2015)**

An alliance of ten green energy providers and municipal utilities in Germany and Austria have lodged a complaint with the CJEU over subsidies for the planned British nuclear power station Hinkley Point C. They argue that the CJEU should "annul" the European Commission's approval of this state aid.

---

## **Nature & Agriculture**



**European Commission Press Release:** [EU joining CITES Convention will help in the preparation of the Commission's wildlife trafficking action plan](#) (08/07/2015)

The EU became the 181st party to join the Convention on the International Trade in Endangered Species (CITES), which covers more than 35 000 animal species and plants, ensuring that trade remains legal and sustainable.

Karmenu Vella, European Commissioner for Environment, Fisheries and Maritime Affairs said: "Drugs, weapons, human trafficking and wildlife trafficking use the same illegal networks. Joining the CITES Convention is a big step in the preparation of our action plan to step up the fight against wildlife trafficking..."

---

## Transport



**EurActiv Article:** [Europe needs a clean break for cleaner fuels](#) (13/07/2015)

Jos Dings, Director of Transport and Environment, sums up the lessons learnt from EU legislation and policies aimed at promoting cleaner energy in transport and offers suggestions for a post 2030 clean fuel policy.

[Report: Low Carbon Transport Fuel Policy for Europe Post 2020](#) (07/07/2015)

---

## Waste



**European Parliament Press Release:** [Circular economy: MEPs call for “systemic change” to address resource scarcity](#) (09/07/2015)  
MEPs voted in favour of a [resolution](#) calling for binding waste-reduction targets, revamped ecodesign laws and measures to uncouple growth from resource use.

---

**EurActiv Article:** [European Parliament urges donation of supermarket leftovers](#) (10/07/2015)

Under a resolution regarding the "circular economy", the European Parliament adopted an amendment, inviting the European Commission to "encourage the creation, in member-states, of conventions enabling the food retail sector to distribute unsold products to charitable organisations". In Europe, up to 50% of edible food - an estimated 89 million tonnes - is wasted each year.

---

## Water



**European Commission Blog:** [If our oceans are not healthy, our economy will be sick](#) (12/07/2015)

**European Commission:** [Latest fish stock data reveal significant progress in northern waters, more effort needed in Mediterranean](#) (14/07/2015)

The recovery of fish stocks in many EU waters has seen 'significant progress' over the past year, with a majority of stocks in the Atlantic, North Sea and Baltic on track for long-term sustainability, said Commissioner Karmenu Vella, responsible for Environment, Maritime Affairs and Fisheries. In contrast, scientific advice on the Mediterranean paints a far bleaker picture.

---

## Events



### 1 May- 31 October

**Event:** EXPO 2015

**Topic/Title:** Feeding the planet: energy for life

**Organisation:** Bureau International des Expositions ([BIE](#))

**Venue:** Milan, Italy

[More information/EU at EXPO Milano website](#)

### 24-28 August

**Event:** Summer Programme on International and European Environmental Law

**Topic/Title:** International & European Environmental Law: The Future We Choose

**Organisation:** [T.M.C. Asser Institute](#)

**Venue:** T.M.C Asser Instituut, R.J. Schimmelpennincklaan 20-22, The Hague, the Netherlands

[More information/Draft programme](#) (.PDF)

## 2-4 September

**Event:** Conference

**Topic/Title:** Effectiveness of Environmental Law

**Organisation:** European Environmental Law Forum ([EELF](#))

**Venue:** Centre d'Etudes et de Recherches Internationales et Communautaires ([CERIC](#)), University of Aix/Marseille, Aix en Provence, France

[More information/Programme](#) (.PDF)

---

## 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

Katarina Hovden (T.M.C. Asser Instituut, The Hague)

Steffen van der Velde (Researcher, T.M.C. Asser Instituut, The Hague)

---



©2015 EEL | R.J. Schimmelpennincklaan 20-22, 2517 JN The Hague, the Netherlands

[Preferences](#)

[Forward](#)

[Unsubscribe](#)

Powered by **Mad Mimi**®  
A GoDaddy® company