



EEL

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EEL News Service

Issue 2016/04 of 8 July 2016

Dear members of the EEL Network,

This issue will be the last one before summer break. In this News Service you will find summaries of five recent judgments on requirements to fulfil Water Framework Directive obligations, the meaning of articles in a regulation concerning shipments of waste, the interpretation of articles in the ETS Directive, and the validity of Commission measures taken to prevent spread of bacteria affecting olive trees. The Court also ordered Portugal to pay for not implementing the Urban Waste Water Directive in spite of an earlier verdict. This past month also saw a good number of news items, including that the Commission has decided to renew the license of glyphosate for 12-18 more months. Furthermore, the outcome of the British referendum has left many aspects the UK environmental law and protection uncertain.

Last but not least, we are very excited that we have had the confirmation of numerous very interesting speakers for our own Summer Programme on International and European Environmental Law: Making it Work (The Hague, 29 August – 2 September). An introduction of prof. Malgosia Fitzmaurice from Queen Mary University, who will open our Summer Programme as key note speaker, can be found in this News Service. Furthermore, prof. Marjan Peeters from Maastricht University will join us in The Hague for this Programme, as well as Jacob Werksman, who is principal advisor of DG CLIMA of the European Commission. You are still welcome to participate.

Wybe Douma

Case Law



- **Case C 648/13**

Poland has not fulfilled its obligations under Water Framework Directive

CJEU Judgement: [Case C 648/13 \(Commission v Poland\)](#) (30/06/2016)

The Commission asked the court to declare that the Republic of Poland has failed to correctly apply Articles 2(19), (20), (26) and (27) and 8(1), 9(2), 10(3) and 11(5) of Directive 2000/60/EC (Water Framework Directive), and also points 1.3, 1.3.4, 1.3.5, 1.4 and 2.4.1 of Annex V to the Water Framework Directive and points 7.2 to 7.10 of Part A of Annex VII to that directive, and has thus failed to fulfil its obligations under those provisions and Article 24. These provisions oblige the EU Members States inter alia to implement the directive by a certain date and assign a competent authority.

The Court found that Poland had indeed failed to fulfil its obligations under the aforementioned provisions.

• Case C-557/14

Portugal to pay for non-implementation of Urban Waste Water Directive

CJEU Judgement: [Case C-557/14 \(Commission v Portugal\)](#) (22/06/2016)

In 2009 Portugal was convicted in case C-530/07 because of non-implementation with certain provisions of the Urban Waste Water Directive. In order to comply with the judgement of case C-530/07 Portugal had to equip agglomerations concerned in the judgement, with urban waste treatment systems that satisfied Article 4 of the Urban Waste Water Directive. In the years following the judgement, Portugal had failed to take the necessary measures, mentioned above, that would ensure compliance with the judgement and the Court found that it had thus violated Article 260(1) of TFEU. Portugal was thus ordered to pay for non-implimentation action under Urban Waste Water Directive. For having delayed implementation, the Court ordered Portugal to pay a lump sum payment of € 3 000 000. In addition, the Court ordered Portugal to pay a penalty payment of € 8 000 per day of delay - thus from the date of delivery of judgement of the current case C-557/14 judgement until judgement of case C 530/07 had been complied with in full.

• Case C-69/15

Interpretation of certain articles in the Regulation on shipments of waste

CJEU Judgement: [Case C-69/15 \(Nutrivet D.O.O.E.L.\)](#) (09/06/2016)

This preliminary ruling concerned the administrative fines that were imposed on Nutrivet D.O.O.E.L. by the Romanian National Inspectorate of Environment and Nature, for infringements of the rules on shipments of waste. The ruling concerned the interpretation of Article 2(35)(g)(iii), Article 18(1)(a) and Article 50 of Regulation No 1013/2006 on shipments of waste, and point 15 of Annex IC to that regulation.

The CJEU determined that where it concerns Article 2(35)(g)(iii) of, it must be interpreted as meaning that shipments of waste, intended for recovery, must be considered illegal when the document referred to in Annex VII relating to a shipment contains incorrect or inconsistent information, regarding the importer/consignee, the recovery facility and the countries/States concerned. This illegality is irrespective of whether or not that information was given correctly in any other document made available to the authorities. With regards to Article 50(1), under which penalties are to be imposed with regards to infringements, that it must be interpreted as meaning that a waste shipment for which the accompanying document (Annex VII) contains incorrect or inconsistent information may be penalised by a fine that is the same in amount as the fine imposed for infringement of the obligation to complete that document. The referring court will still have to review the proportionality of such a penalty, taking into account the risks in particular.

- **Case C 158/15**

On site storage of a coal-fired power plant part of 'installation'

CJEU Judgement: [Case C 158/15 \(Elektriciteits Produktiemaatschappij Zuid-Nederland v Bestuur van de Nederlandse Emissieautoriteit\)](#) (09/06/2016)

This preliminary ruling concerned the inclusion of GHG emissions resulting from self-heating of coal while in storage between a Dutch electricity producer (EPZ) and the administration of the Netherlands emissions authority. The ruling concerned the interpretation of Article 3(e) of the ETS Directive 2003/87/EC, and of Article 27(2) of Commission Regulation No 601/2012.

The CJEU ruled that a fuel storage site of a coal-fired power plant is part of an 'installation' within the meaning of Article 3(e) of the ETS Directive. With regards to Article 27(2) of Commission Regulation No 601/2012, the Court ruled that it must be interpreted as meaning that coal lost as a result of the process by which it naturally self-heats while in storage on a site that is part of an installation within the meaning of Article 3(e) of the ETS Directive cannot be regarded as coal exported from that installation.

- **Joined cases C-78/16 and C-79/16**

Commission measures protecting olive trees not invalid

CJEU Judgement: [Joined cases Pesce and Serinelli \(Xyllela fastiosa\) C-78/16 and C-79/16](#) (FR) (09/06/2016)

The bacteria *Xyllela fastiosa* spreads the Olive Quick Decline Syndrome. This disease has already affected over one million olive trees in the Puglia region in the heel of Italy. To eliminate and stop the spread of the disease, the Commission issued rules on the destruction of affected trees and of still healthy trees in a buffer zone of 100 meters around affected areas. Olive tree farmers ordered to set up such buffer zones by Italian authorities objected to this and in ensuing national cases, the validity of the Commission measures was questioned. The CJEU was *inter alia* asked to rule on the validity of the measures in the light of various EU legal principles. Where the precautionary principle is concerned, the Court stressed that this justifies measures in circumstances where the existence or the magnitude of the risks cannot be established with scientific certainty yet. The unsubstantiated claim some of these measures might not be necessary to fight the bacteria does not change this. The absence of compensation for the farmers was not violating article 17(1) Charter. That provision sets out that property cannot be taken away, except in cases when it is done in the public interest. A right to compensation stems from that provision, so the fact that the contested measures do not contain create a compensation scheme cannot be interpreted to mean that the right to compensation is excluded. From this, the Court concluded that the decision in question cannot be considered to be invalid on those grounds.

The English translation of this case is not yet available, hence the French version is presented for the time being. For other language versions, see the CJEU website curia.eu.

General



EurActiv Article: [EU bans deep sea trawling](#) (04/07/2016)

EU institutions have agreed to ban trawler fishing at a depth exceeding 800 metres. The accepted text was very watered down from some previous proposals, due to intense lobbying from Spain. The EP had rejected a proposal in 2013, and in an untraditional manner, an EU member State (Luxembourg who held presidency at the time) put the issue back on the European agenda.

EurActiv Article: [CETA and TTIP threaten the EU's precautionary principle](#) (01/07/2016)

By not mentioning the precautionary principle in either FTAs, the standing of the precautionary principle in EU law might be threatened.

See also:

- * [CETA, TTIP and the EU precautionary principle](#) (study)
- * [CETA, TTIP und das europäische Vorsorgeprinzip](#) (study)
- * [CETA, TAFTA et le principe de précaution de l'Union européenne](#) (study)
- * [Les traités transatlantiques menacent-ils le principe de précaution européen ?](#)
- * [EU Approval of CETA](#)
- * [CETA exclusive or mixed competence given CJEU case-law?](#)

European Council: [Forest law enforcement, governance and trade: Council conclusions](#) (28/06/2016)

The Council has adopted conclusions on the evaluation of the FLEGT action plan (forest law enforcement, governance and trade) and of the EU timber regulation (EUTR). It had to be noted that member states are not yet enforcing the rules that came into effect in March 2013.

EurActiv Article: [Brexit: A step forwards or backwards for a Greener Europe?](#) (28/06/2016)

After Brexit, the British contributions for a greener Europe are likely to be missed. Environment should be at the center of a European reboot.

European Parliament Briefing: [The EU and the Aarhus convention: access to information, public participation in decision-making and access to justice in environmental matters](#)571357_EN.pdf) (17/06/2016)

Key findings include: eight member states are non-compliant with the Convention and adequate implementation of EU legislation is important for compliance with the Convention

European Parliament Briefing: [The implementation of the Environmental Liability Directive: a survey of the assessment process carried out by the Commission](#)556943_EN.pdf) (06/06/2016)

Air



EuroNews article: [Who is the worst in the EU for 'exporting' deadly coal pollution?](#)

Infographic on EU's worst 'exporters' of coal pollution.

European Council Press Release: [Air quality: agreement on stricter limits for pollutant emissions](#) (30/06/2016)

The Council and the European Parliament have reached a provisional agreement on a directive to reduce emissions of air pollutants. Under the new directive, stricter limits are set from 2020 to 2029 and from 2030.

Chemicals



EurActiv Article: [Commission prolongs glyphosate licence by 18 months](#)
(29/06/2016)

After Member States failed to reach a qualified majority on the executive's proposal, the Commission has decided to extend the glyphosate license for 18 months, in anticipation of ECHAs assessment that will be delivered next year.

See also:

* Christopher J Portier a.o., [Open letter: Review of the Carcinogenicity of Glyphosate by EFSA and BfR](#)

* Environment Committee, [Glyphosate herbicide: don't renew its authorisation, urge MEPs](#) (press release)

Institute of Science in Society, ["Serious Deficiencies" in EFSA Glyphosate Re-assessment Signals EU Re-approval](#)

* Farming UK, [Glyphosate use extended for a further 18 months](#)

* Corporate Europe Observatory, [Glyphosate: one pesticide, many problems](#)

European Commission: [Commission presents scientific criteria to identify endocrine disruptors in the pesticides and biocides areas](#) (15/06/2016)

Climate Change



Financial Times Article: [Our climate change act does not depend on EU](#)
(06/07/2016)

The non-profit environmental law organisation ClientEarth states that UK climate action doesn't depend on the EU.

The Guardian Article: [UK sets ambitious new 2030s carbon target](#) (30/06/2016)

The UK has set a new, ambitious carbon target for early 2030s. This should somewhat calm speculations about the Brexit impact on the environment in the UK.

European Parliament Briefing: [Post-2020 reform of the EU Emissions Trading System](#)583851_EN.pdf) (27/06/2016)

EurActiv Article: [Brexit calls EU climate action into question as top MEP quits](#) (24/06/2016)

In the wake of Brexit, Ian Duncan (and MEP for Scotland) has resigned as rapporteur on the bill that would reform EU ETS. This leaves the reform of the European carbon market very uncertain.

EurActiv Article: [UN boss: Brexit would mean rewriting Paris Agreement on climate change](#) (22/06/2016)

Christiana Figueres, one of the main architects of the Paris Agreement, has stated that an exit of the UK from the EU “would require recalibration”.

European Commission Press Release: [EU Covenant of Mayors and Compact of Mayors launch largest global coalition of cities committed to fighting climate change](#) (22/06/2016)

Energy



European Parliament News Release: [Energy efficiency: MEPs to vote on binding new rules for labelling](#) (04/07/2016)

The MEP are to vote on binding new rules for labelling, will be the first step in creating and enforcing the new labelling rules.

Nature & Agriculture



EurActiv Article: [Europe cracks down on wildlife trafficking](#) (23/06/2016)

EU environmental ministers have adopted a new action plan to tackle wildlife trafficking.

EU Observer Article: [EU and Poland clash over plans to log primeval forest](#) (17/06/2016)

Poland's new plan to allow increased logging in Bialowieza Forest that was approved a few months ago, is causing a clash between Poland and the European Commission. Increased logging is said to be unlawful.

Transport



The Guardian Article: [European commission warned of car emissions test cheating, five years before VW scandal](#) (20/06/2016)

Its own scientists had warned the European Commission, five years before the VW scandal about potential 'defeat devices' that could cheat emission tests

EU Observer Article: [Dieselgate: How carmakers were allowed to bend the law](#) (02/06/2016)

National authorities across the EU are choosing not do much about devices in cars that deliberately diminish effects of technologies designed to prevent environmental damage.

Waste



European Commission Press Release: [Commission proposes to fine Slovakia in connection with landfill in Žilina](#) (16/06/2016)

EurActiv Article: [Commission's axing of Circular Economy Package 'stalled' green policies across EU](#) (10/06/2016)

The European Commission has been accused of delaying action on waste and recycling policies for circular economy plans

Keynote speaker prof Fitzmaurice opens the 2016 Asser Summer Programme on International and European Environmental Law

Malgosia Fitzmaurice holds a chair of public international law at the Department of Law, Queen Mary University of London. She specialises in international environmental law, treaties, indigenous peoples and Arctic law and has published widely on these subjects. She was one of the Queen Mary Investigators (with on a multinational interdisciplinary research project, [European Union Action to Fight Environmental Crime \(EFFACE\)](#)), funded by the European Commission under the 7th Framework Programme for Research. Professor Fitzmaurice lectures widely in the United Kingdom, Europe (Sorbonne, Pantheon) and the United States (Berkeley Law School and the New York University School of Law) and participates in many international conferences. In 2001 she delivered the Hague Academy lecture on the International Protection of the Environment. She is the Editor in Chief of the [International Community Law Review](#), Brill Publishers, Martinus Nijhoff (first issue published in 2006) and Editor-in-Chief of a book series 'Queen Mary Studies in International Law' published by Martinus Nijhoff Publisher (Brill). She published in 2015 a monograph *Whaling and International Law* (Cambridge University Press).

Her key note opening lecture will deal with the effectiveness of international environmental law and non-binding instruments. The lecture will focus on the analysis of the treaties and non-binding instruments (soft law instruments) which solve environmental problems, which are effective and efficient (e.g. Montreal Protocol and/or the Aarhus Convention) and on these which fail and the reasons why. The presentation will also deal with treaties which contain soft obligations although are binding (e.g. the Paris Agreement). Soft law will be also analysed, how it influences the development of international environmental law, international decision making and how it can act as a 'stepping stone' and 'harden' into binding norms.

Registration for our Summer Programme on International and European Environmental Law: Making it Work, will be held in The Hague between 29 August and 2 September 2016 is still possible. For more information, see [here](#)

Events



29 August- 2 September 2016

Event: [Summer Programme on International and European Environmental Law: Making it Work](#)

Title: Making it Work

Organisation: T.M.C. Asser Instituut

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

[Draft programme & registration](#)

Colofon

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