



## EEL News Service

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## Case Law

### Polish shale gas licences violate EU law

**C-569/10, [European Commission v Republic of Poland](#), 27 June 2013**

By failing to adopt measures necessary to ensure that access to activities relating to the prospection, exploration and extraction of hydrocarbons is free of all discrimination as between interested entities, and that the authorisations to carry out those activities are granted following a procedure in which all interested entities may submit applications in accordance with criteria published in the Official Journal of the European Union prior to the beginning of the period in which applications may be submitted, Poland did not comply with its obligations under Articles 2(2), 5(1) and (2) of the Hydrocarbons Licensing Directive 94/22/EC. This ruling affects around 100 shale gas exploration licences issued to firms which were accompanied by production permits that had not been put out to tender.

See also:

- [EU court casts doubt on legality of Poland's shale gas licences](#), Euractiv, 15-07-2013.

### Non-compliance with Energy Performance of Buildings Directive

**Case C-345/12, [Commission v. Italy](#), 13 June 2013**

The Commission claimed that Italy failed to take, within the period prescribed, all the measures necessary to comply with Articles 7(1) and (2), 10 and 15(1) of Directive 2002/91/EC on the energy performance of buildings, in conjunction with Article 29 of Directive 2010/31/EU on the energy performance of buildings. The Court finds that by establishing an exemption from the obligation to submit a certificate on the energy performance for leasing a building when such a certificate is not yet provided at the time of signing the contract, Italy has not correctly transposed Article 7(1) of Directive 2002/91. The Court also concludes that by establishing a system of self-declaration by the owner for buildings with very low energy performance, Italy has not correctly implemented Article 7(1) and (2) as well as Article 10 of the Directive. Finally, the Court indicates that Italy had not adopted the necessary measures to ensure the implementation of Article 9 in time.

Directive 2010/31/EU has recently replaced Directive 2002/91/EG and has introduced several new aspects to the regulation of energy performance. These changes were not at issue in the present case. It is interesting to note that the Netherlands has also been accused of failing to transpose art. 7(1) of Directive 2002/91 and of failing to implement Directive 2010/31. One of the newly introduced aspects is the use of financial incentives in order to catalyse the energy performance of buildings and the transition to nearly zero- energy buildings (art. 10). The Dutch House of Representatives voted against an obligatory energy label system in the Netherlands. The minister involved emphasized the risk of EU sanctions. Discussions and research is taking place on the simplification of the energy label. Furthermore, a meeting with the European Commissioner of Energy is scheduled. Meanwhile regulations are being prepared in order to better comply with the EU Directive. Recently the Commission announced that it is referring Portugal to the ECJ for failing to transpose directive 2010/31. Infringement procedures have also been launched against a number of other Member States for non-transposition or only partial transposition of Directive 2010/31/EU over the course of 2012 and earlier in 2013.

Regarding the content of the Directives at issue, there are no common criteria to measure the environmental performance of buildings. The Commission is gathering views on how to reduce their environmental impacts. A consultation is open until 1st October 2013. Contributors are asked for their views on the main environmental issues for the buildings sector, availability of data, systems to assess and communicate environmental performance of buildings, how to stimulate demand, and how construction materials could be used more efficiently.

See also:

- [Energy efficiency in buildings: Commission refers Portugal to Court for failing to transpose EU rules](#), Europa Press Release, 20-06-2013.

- [Verwachte wijzigingen energielabel 2013](#), Rijksoverheid, 2013.
- [Kamer: geen verplicht energielabel](#), NOS, 20-11-2012.
- [Toezeggingen en moties bouwregelgeving, energiebesparing en brandveiligheid](#), Rijksoverheid, 16-05-2013.
- [Environment: Give your opinion on reducing the environmental impact of buildings](#), Europa Press Release, 09-07-2013.

## Declassification of special areas of conservation

**Opinion Advocate General, C-301/12, [Cascina Tre Pini s.s. v Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others](#) (Reference for a preliminary ruling from the Consiglio di Stato (Italy)), 20 June 2013**

Although the Habitats Directive mentions the possibility of the declassification of special areas of conservation, the dispute in the present case concerns the rights to which the *owners* of the land in question are entitled. According to AG Kokott this will depend on the provisions of general EU law on the implementation of the Habitats Directive by national administrations, with particular reference to the fundamental right to property and the right to be heard. She points out that pursuant to the fourth sentence of Article 4(1) of the Habitats Directive, the competent national authorities must consider, at the request of an owner of land forming part of a SCI (Site of Community Importance), whether it should be proposed to the Commission that that land should be excluded from the site, if the request is based on substantiated reasoning that, despite compliance with Article 6(2) to (4) of the directive, the land cannot contribute towards the conservation of natural habitats and wild fauna and flora or to the setting up of the Natura 2000 network. Furthermore, the AG indicates that Member States must arrange the surveillance of SCIs pursuant to Articles 11 and 17 of the Directive in such a way that they are able to protect and manage them appropriately, and must communicate to the Commission at least every six years up-to-date information on the state of the sites which also reveals whether the sites are contributing towards the conservation of natural habitats and wild fauna and flora or to the setting up of the Natura 2000 network. The AG also states that Member States must give the owners of the land concerned an opportunity to submit observations when considering whether to propose to the Commission, in relation to that land, the adaptation of the list of SCIs pursuant to the fourth sentence of Article 4(1) of the Directive. Finally, the AG points out that a provision of national law under which the power of initiative in relation to the review of SCIs is conferred on the Regions and Autonomous Provinces, but no such power of initiative is also conferred on the State, even to act in lieu of the Regions or Autonomous Provinces in the event that they fail to act, does not prevent the proper application of the fourth sentence of Article 4(1), Article 9 and Article 11 of the Directive.

## Rule of exhaustion of domestic remedies

**ECHR no. 29179/06, [Miroslawa and Janusz Pawlak v Poland](#), 19 March 2013**

In this ECHR case the applicants complain, relying on Article 8, that they suffered noise, pollution and other nuisance as a result of the operating of a commercial centre built unlawfully close to their home. The Court notes that the applicants had and still have the possibility of bringing a civil claim under the Civil Code for protection of their property, namely restitution of their lawful position and cessation of infringements of their ownership rights. According to the Court, the applicants have not shown that the remedies advanced by the Government were inadequate or ineffective. The Court is not persuaded by the applicants' argument about the alleged difficulties in using the civil remedies on account of the change in the ownership of the commercial centre or on account of the delays in the issuance of the impugned decisions. The Court concludes that the application should be rejected in accordance with the principle of subsidiarity for non-compliance with the rule of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention.

## Italy finally facing fines over waste management

EU law obliges Member States to recover and dispose of waste in a manner that does not endanger human health and the environment. At last, the Commission has decided to refer Italy back to the ECJ for its long-running failure to manage waste adequately in the Campania region.

In its ruling against Italy in March 2010, the Court was particularly concerned about the absence of an integrated and adequate network of disposal installations. Since then some progress has been made: Italy adopted a new waste management plan for Campania and presented a programme of measures intended to manage waste in the region until 2016, after which new waste treatment plants are expected to become operational. However, since the summer of 2011 local authorities have channeled large quantities of waste to facilities in other regions, providing an interim solution. According to the Commission a new waste crises cannot be excluded. Furthermore, the Commission is concerned at the delays that have halted construction of most of the planned plants for recovering organic waste, incinerators and landfills. There is now a risk that many of the planned installations will not be ready within the timeframe given by the Court. There are also concerns about the uncertain fate of 6 million tons of baled waste stocked at various sites in Campania, awaiting an incinerator that is yet to be built, and about the low rate of separate collection in the Naples province.

The Commission is asking for a daily penalty payment of € 256819 for each day after the second Court ruling until Italy complies with the judgment and a lump sum calculated on the basis of € 28090 per day for the period between the first judgment and the day of compliance or the day of the second Court ruling.

See also:

- [Environment: Italy referred back to Court over waste management in Campania, Commission asks for fines](#), Europa Press Release, 20-06-2013.

## Commission takes Greece to Court over nitrate pollution

The [Nitrates Directive](#) requires Member States to monitor their waters and identify those affected, or likely to be affected, by pollution caused by nitrates from agricultural sources. Furthermore, it requires Member States to designate Nitrate Vulnerable Zones for which they must set up appropriate action programmes aiming at preventing and reducing the pollution.

According to the Commission, water quality data shows that some areas of Greece which are currently not designated are in fact vulnerable to pollution by nitrates. The Commission is therefore pressing Greece to take action by designating more areas and designing appropriate plans to deal with the problem. On 1 October 2012 the Commission sent a reasoned opinion to Greece, urging action to redress the situation. As a response Greece designated some additional Nitrates Vulnerable Zones. However, this does not address all grievances as identified by the Commission, as other areas still need to be designated or have only been partially designated. The Commission has therefore decided to refer the case to the ECJ.

See also:

- [Environment: Commission takes Greece to Court over nitrate pollution](#), Europa Press Release, 20.06.2013.

## General

### Main results of the Environment Council

During the 3246th Council meeting on the environment held in Luxembourg, 18 June 2013 the Council adopted conclusions on the Commission communication "An EU strategy on adaptation to climate change". The aim of the strategy is to contribute to a more climate-resilient Europe by enhancing preparedness and the capacity to respond to the impacts of climate change at local, regional, national and EU levels. The Council welcomed the Commission communication and recalled, among other issues, that the EU objective of keeping the global mean surface temperature increase below 2°C compared with pre-industrial levels requires urgent and ambitious mitigation action by the global community. The Council also called upon the Commission to continue to take

climate change adaptation into account in relevant proposals for EU action and further to facilitate climate-proofing EU action, in particular in key policy areas including: the common agricultural policy, the cohesion policy and the common fisheries policy; facilitating more resilient infrastructure; exploring the need for additional guidance on ecosystem approaches to adaptation as well as exploring the potential of insurance and other financial products for resilient investment and business decisions.

Furthermore, the Council took note of a progress report on a draft directive on indirect land-use change (ILUC) amending the fuel quality and renewable energy directives. The proposed directive aims to minimise the impact of indirect land-use change on greenhouse gas emissions and to promote a transition to biofuels that deliver substantial greenhouse gas savings.

In the follow-up to the UN Conference on Sustainable Development the Council endorsed draft Council conclusions on the overarching post-2015 agenda. The draft conclusions build on the Commission communication "A decent life for all", which was presented to ministers at the Environment Council on 21 March 2013. Besides that, the Council held an exchange of views on the links between the post-2015 development agenda and the elaboration of the Sustainable Development Goals.

See also:

- [Council conclusions on climate change: An EU strategy on adaptation to climate change](#), Council of the European Union, 21.06.2013.
- [3246th Council meeting - Environment](#), Council of the European Union, 18.06.2013.

## Agreement on 7th Environment Action Programme

An agreement has been reached between the European Parliament and the Council on the new Environment Action Programme (EAP) to 2020, "Living well, within the limits of our planet". The agreement of 19<sup>th</sup> June 2013 was a flagship legislative priority for the Irish Presidency. The new EAP7 sets out the priority objectives for EU environment policy to 2020, grounded in a longer-term vision for an inclusive, green and competitive European economy that safeguards the environment. The agreement is to guide and drive actions in advancing resource efficiency, the green economy and the environmental agenda generally in the period to 2020 and beyond. According to the Environment Commissioner Janez Potočnik "[t]his agreement sends a clear signal that the EU and its Member States firmly support a strong and smart environment policy as a key condition for healthy living and a competitive, resource-efficient and low-carbon economy in Europe".

The programme, the seventh of its kind, builds on 40 years of EU environment policy, and draws on a number of recent strategic initiatives in the field of environment, including the [Resource Efficiency Roadmap](#), the [2020 Biodiversity Strategy](#) and the [Low Carbon Economy Roadmap](#). Furthermore, the programme aims to secure the commitment of EU institutions, Member States, regional and local administrations and other stakeholders to a common agenda for environment policy action up to 2020.

See also:

- [Irish Presidency secures agreement on 7th Environment Action Programme to 2020](#), 19-06-2013.
- [Commissioners Janez Potočnik and Connie Hedegaard welcome the trilogue agreement on the new Environment Action Programme to 2020](#), Europa Press releases, 20-06-2013.

## Nature and Agriculture

### Political agreement post 2013 CAP

After months of haggling over how ambitious the policy would be on ending quotas, overhauling direct payments to farmers and making agriculture more environmentally responsible negotiators representing national agriculture ministers, the European Parliament and the Commission ended up with a deal that now heads to the full Parliament and national governments for final approval. With this

agreement on reforming the common agricultural policy (CAP) post 2013 is aimed at a fairer CAP, a CAP which enhances the position of farmers in the food production chain, a greener CAP and a more efficient and transparent CAP. All aspects of the reform will be applicable as from 1 January 2014, except for the new direct payments structure ('green' payments, additional support for young people, etc.) which will apply as from 2015 in order to give Member States time to inform farmers about the new CAP and to adapt computer-based CAP management systems. Despite the deal, the CAP still awaits a final agreement on the EU's budget for 2014-2020. As it stands, the budget for agriculture and rural development will be around €380 billion, with some €280 billion set aside for direct payments to farmers and around €80 billion for rural development. The negotiators also left several unresolved finance-related issues for an ultimate decision by the EU Council. These include the desire of national governments to be able to swap money between the CAP's Pillar 1 and Pillar 2 financing pots, the former paid directly to farmers and the latter providing co-financing for rural preservation and development projects. Environmental groups criticize the deal since it includes broad exemptions from mandatory greening measures first proposed by the Commission's CAP reform in October 2011.

See also:

- [Political agreement on new direction for common agricultural policy](#), Europa Press Releases, 26 June 2013.
- ['Damn tough' deal on CAP leaves little room for celebration](#), Euractiv, 27 June 2013.

## Water

### Substances added to surface water priority list & “watch list”

The European Parliament, in agreement with EU Member States, has added 12 new substances to the EU priority list of pollutants known to pose a risk to surface water. Also, for the first time, three pharmaceuticals will be included on a "watch list" of emerging pollutants that later could be added to the priority list. There are currently 33 aquatic pollutants covered under the EU's Directive on Priority Substances. Furthermore, the Parliament has asked the European Commission to develop a strategic approach to tackle the risks posed by pharmaceuticals in the aquatic environment.

The maximum permitted concentrations in water set in the EQS (Environmental Quality Standards) for newly-identified substances will take effect in 2018 and it is aimed to achieve good chemical status for these substances by 2027. To this end, Member States are required to submit supplementary programmes of measures and monitoring programmes to the Commission by 2018. Revised EQS for existing substances are to be included in River Basin Management Plans in 2015, with the aim of achieving good surface water chemical status for these substances by 2021.

See also:

- [Surface waters: 12 new controlled chemicals, three pharmaceuticals on watch list](#), European Parliament, 02.07.2013.
- [New chemicals, drugs added to EU water pollution watch list](#), EurActiv, 04.07.2013.

## ICJ news

## Public hearings ‘Whaling in the Antarctic’ concluded

In 2010, Australia initiated proceedings against Japan at the International Court of Justice (ICJ). The public hearings were concluded on 16 July 2013 and the Court began its deliberation. The ruling of the ICJ is expected by the end of 2013.

Australia alleges Japan of pursuing a large scale programme of whaling under the Second Phase of its Japanese Whale Research Programme under Special Permit in the Antarctic (JARPA II) which is in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling (ICRW). According to Australia there is a lack of demonstrated relevance for the conservation and management of whale stocks, and to the risks presented to targeted species and stocks. Therefore Australia is of opinion that the JARPA II programme cannot be justified under Article VIII of the ICRW regulating the granting of special permits to kill, take and treat whales for purposes of scientific research. Furthermore, Australia argues that Japan is in breach with other international obligations for the preservation of marine mammals and marine environment, like the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Convention on Biological Diversity.

By filing in the Registry of the Court a Declaration of Intervention, New Zealand got involved in November 2012. New Zealand also argues that issuing a Special Permit for JARPA II does not meet the needed requirements by the ICRW (namely that the killing is necessary and proportionate to the outcomes of the research, and will have no negative effect on whale stocks), and that permits should therefore be prohibited.

See also:

- [It's Australia v Japan over whaling in the Antarctic](#), The Guardian, 25.06.2013.
- [Whaling in the Antarctic \(Australia v. Japan: New Zealand intervening\)](#), ICJ, 17.07.2013.

## Events

### [World Water Week](#)

World Water Week is hosted and organised by the Stockholm International Water Institute (SIWI) and takes place each year in Stockholm. The World Water Week has been the annual focal point for the globe's water issues since 1991. Every year, over 200 collaborating organisations convene events at the World Water Week. In addition, individuals from around the globe present their findings at the scientific workshops. The 2013 theme is Water Cooperation - Building Partnerships.

Date: 1-6 September 2013

Location: Stockholm

### [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

### **Remedies for breach of EU law by public authorities**

Topics include remedies for breach of the Charter, the ECHR and Aarhus Convention; remedies where a public authority fails to act; particular focus on the area of environmental law; update on remedies cases for breach of EU law; afternoon case study to allow participants consider remedies for breach of EU environmental law in practice.

Date: 13 September 2013

Location: Dublin

### **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

### **Main Principles of EU Environmental Law**

With more than 200 legal acts currently in force at EU level, environment represents one of the most dense and far-reaching areas of EU law. EU environmental law covers a wide range of topics both sectoral such as for example waste management, nature protection or water management and horizontal such as public participation in environmental decision-making, environmental impact assessment or access to justice. All these topics are governed by a number of environmental principles both at EU level and national level. This seminar offers a comprehensive overview of the main principles which govern EU environmental law such as the “polluter-pays” principle, the precautionary principle, the prevention principle, the rectification at source of environmental damage. The crucial issue of access to justice in environmental matters will also be covered.

Date: 10-11 October 2013

Location: Luxembourg

### **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

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## **Colofon**

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