



# EEL

EUROPEAN  
ENVIRONMENTAL  
LAW

Case Law  
General  
Climate Change  
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Colofon

## EEL News Service

### Issue 2015/12 of 16 September 2015

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**Dear Members of the EEL Network,**

We look back at our successful Summer Programme on International and European Environmental Law: The Future We Choose, filled with lively and stimulating presentations and debates, including a workshop on Climate Change negotiations. See further [here](#).

Besides the usual CJEU Case Law, this News Service also contains our dossier regarding Obama's Clean Power Plan, which can be found under "Climate" and on the [EEL website](#).

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## Case Law



### **CJEU: Case C-653/13: Commission v Italy** (16/07/2015)

Italy still fails to apply the Waste Framework Directive [2006/12/EC](#) correctly, despite an earlier verdict from 2010 ([C-297/08](#)) of the CJEU. The continuing accumulation of tonnes of waste in the streets of Naples and elsewhere because of a lack of sufficient waste installations (like landfills and incinerators) in the Campania region was a result of administrative, functional and political issues that delayed solutions in line with EU law, Italy explained. In line with established case law, the CJEU explained that this does not justify failures to comply with EU Law and protect human health and the environment properly. Using the possibility to impose financial sanctions on EU member states that fail to observe an earlier conviction, the Court then ordered Italy to pay a lump sum of €20 million plus a daily penalty of €120,000 per day of delay in executing the 2010 judgment, the penalty being payable from the date of the new judgment, i.e. 16 July 2015. The amounts were set a level that took into account Italy's repeated infringements of EU waste rules and the need for dissuasive measures to bring these infringements to an end.

See also [CJEU Press Release](#). The judgment itself is available in [French](#) and [Italian](#).

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**CJEU: Case C-612/13 P: ClientEarth v European Commission** (16/07/2015)

The Commission refused ClientEarth access to studies about the extent to which Member States' legislation conformed to EU environmental law. The Commission relied on Article 4(2) of [Regulation 1049/2001](#), claiming that disclosure would undermine, inter alia, 'the purpose of inspections, investigations and audits'.

The General Court approved of this in case ([T-111/11](#)). ClientEarth appealed against that decision at the CJEU and managed to convince this court that the Commission should be more transparent in cases where no infraction procedure had been or was being initiated. The Commission had unduly extended the presumption of confidentiality by withholding studies where it was uncertain that a pre-litigation proceeding would be initiated and where the Commission had not formally notified the concerned Member State(s). The presumption of confidentiality only applies to ongoing administrative or judicial proceedings, and this exception must be interpreted and applied strictly. The CJEU concluded that the Commission should have examined, on a case-by-case basis, whether these studies could be fully disclosed to ClientEarth.

The CJEU did find that no full disclosure was called for of studies that 'had already been placed in a file relating to the pre-litigation stage of infringement proceedings opened with the sending of a letter of formal notice to the Member State concerned'. Under these circumstances, disclosure 'would undermine the protection of' the purpose of investigations (art 4(2) Regulation 1049/2001) by threatening 'the climate of trust which has to exist between the Commission and each Member State concerned' and by impeding the achievement of a consensual solution.' It can be regretted that the CJEU did not attach more importance to transparency in light of the fact that the Commission is not bound by the recommendations made by third parties in the studies.

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## **CJEU: ClientEarth and Pesticide Action Network Europe (PAN Europe) v European Food Safety Authority (EFSA) (16/07/2015)**

The European Food Safety Authority (EFSA) promulgated a draft guidance document for applicants who wish to place plant protection products on the market (pursuant to Article 8(5) [Regulation 1107/2009](#)). ClientEarth and PAN Europe (the applicants) submitted an application to EFSA requesting access to documents under [Regulation 1049/2001](#). EFSA initially withheld its documents but then retracted its position in 2011, granting access to all the information requested except for the names of the external experts who made certain comments on the draft of that guidance document.

The General Court rejected the applicants' request ([T-214/11](#)) for the names of the external experts and the case came before the CJEU. The CJEU held, first of all, that the information requested was 'personal data' within the meaning of Article 2(a) of [Regulation 45/2001](#) because it would connect a scientific expert to a particular comment he or she had made. Secondly, it held, in line with the General Court's approach, that two cumulative conditions must be fulfilled before a transfer of personal data could be granted: the transfer must be 'necessary' (Article 8(b) of Regulation 45/2001) and must not prejudice the legitimate interests of the data subject. Finally, the CJEU disagreed with the General Court, finding that the transfer of personal data was necessary 'so that the impartiality of each of those experts in carrying out their tasks as scientists in the service of EFSA could be specifically ascertained' and in order to dispel with the accusations of partiality made against EFSA and ensure its decision-making processes are transparent.

Moreover, EFSA had not given any specific reasons to suggest that the transfer might prejudice the legitimate interests of the data subjects.

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## **General**



**EurActiv Article:** [WWF EU chief: 'NGOs can use Better Regulation Agenda positively](#) (22/07/2015)

The European Commission's Better Regulation Agenda is wrongly perceived by the NGO community as purely business-driven, says Geneviève Pons-Deladrière, a former Commission official who is now heading the WWF's EU office.

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## Climate Change



**Asser EEL Dossier:** [Tackling climate change in the USA: Obama's Clean Power Plan](#)

This dossier offers background information about the way in which the EPA got involved in tackling climate change, gives details about Obama's Clean Power Plan and assesses the likelihood of it facing legal challenge.

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**EurActiv Article:** [Climate change increases risk of death from heart disease, study says](#) (17/07/2015)

High temperatures, heat waves and extreme temperature fluctuations pose an ever-increasing threat to the global population, with a recent study by the German Weather Service indicating what health risks follow. Longer and more intense periods of heat are a serious burden to the cardiovascular system. Such conditions are proven to lead to more deaths, especially among the elderly or people who suffer from certain chronic illnesses. The study indicates that heat waves can increase the risk of death among those suffering from a heart condition by up to 15%.

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## Energy



**EurActiv Article:** [UK moves to slash renewables subsidies](#) (22/07/2015)

Britain's government has moved to slash renewable subsidies, which it said threatened to push up household bills. The plans include closing support for small-scale solar projects a year early, changing the way renewable projects qualify for payments and modifying subsidies for biomass plants.

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**European Commission Energy:** [New electricity market rules allow efficient EU-wide electricity trading](#) (24/07/2015)

The new Regulation creates a comprehensive legal framework for electricity trading in Europe and makes so-called 'market coupling' legally binding across the EU. Market coupling is estimated to save customers from €2.5 to 4.0 billion a year. It will also help increase trading of electricity over shorter time horizons, allowing for a more efficient integration of renewables into the grid as suppliers and traders can take into account better forecasts on how much solar or wind energy will be produced.

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**The Guardian UK Article:** [TTIP: what does the transatlantic trade deal mean for renewable energy?](#) (05/08/2015)

"Trade partnership between the EU and US could remove barriers facing the green energy sector, but experts warn of potential dangers".

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## Nature & Agriculture



**EurActiv Article:** [Reformers call for new thinking on ways to finance the CAP](#) (20/07/2015)

Under pressure from farm ministers and food producers, the European Commission is working on simplifying agricultural rules that took effect this year. But some analysts say what the Common Agricultural Policy (CAP) really needs is a radical change in the way it is financed.

**EurActiv Article:** [CAP: Still a work in progress](#) (24/07/2015)

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**EurActiv Article:** [Thai seafood products could be banned, warns MEP](#) (23/07/2015)

Gabriel Mato, a prominent lawmaker from the European Parliament's Committee on Fisheries, explained that he would support giving a "red card" to Thailand, meaning banning the import of its fisheries products. Under the EU IUU (Illegal, unreported and unregulated fishing) Regulation (1005/2008), authorities in the member states could refuse imports of fish products from countries identified by the EU as non-cooperating countries in the fight against illegal fishing.

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**European Commission Fisheries:** [Commission adopts €32.6m investment package for the Slovenian fisheries sector](#) (28/07/2015)

"The package seeks to promote smart and green fisheries and aquaculture while strengthening companies' economic viability and the potential for maritime economic growth. In particular, it aims to foster a sustainable, innovative and profitable aquaculture sector. It also aims to secure the sustainable development of fishing communities, for instance through improved added value and diversification of professional activity."

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**European Commission Press Release:** [Safety net measures for dairy, fruit and vegetables to be extended](#) (30/07/2015)

The European Commission is finalising the last details before adopting decisions to support the dairy, fruit and vegetables sector and extending support to these sectors into 2016. These measures are the response to Russia's announcement that it will prolong its ban of European agricultural imports until August 2016.

See also:

**EurActiv Article:** [Russia starts pouring Western food in wasteland defying public outrage](#) (07/07/2015)

**EurActiv Article:** [Brussels extends aid to farmers hard hit by Russian ban](#) (07/08/2015)

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**See Also:**

**The Guardian UK Article:** [UK suspends ban on pesticides linked to serious harm in bees](#) (23/07/2015)

Farmers will be able to use blacklisted pesticides linked to serious harm in bees after the UK government temporarily lifted an EU ban.

**EurActiv Article:** [Trade should trump health concerns in hormone disruptor debate, US tells EU](#) (29/07/2015)

**EurActiv Article:** [Scotland to issue formal ban on genetically modified crops](#) (10/08/2015)

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## Waste





**EurActiv Article:** [British lawmakers demand action from Juncker on food waste](#)  
(23/07/2015)

An estimated 89 million tonnes of food is wasted across Europe every year. This figure could rise to approximately 126 million tonnes by 2020 if no action is taken. The House of Lords, along with national parliaments in 16 member states have proposed a 'Green Card' on the issue (i.e. a collective proposal to the Commission), demanding better EU-wide guidelines on food donation and stronger monitoring of cross-border supply chains

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## 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

Anna Bertram (T.M.C. Asser Instituut, The Hague)

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

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

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