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Jean Monnet Chair

*European Environmental
Law in a nutshell*

Challenges and
perspectives

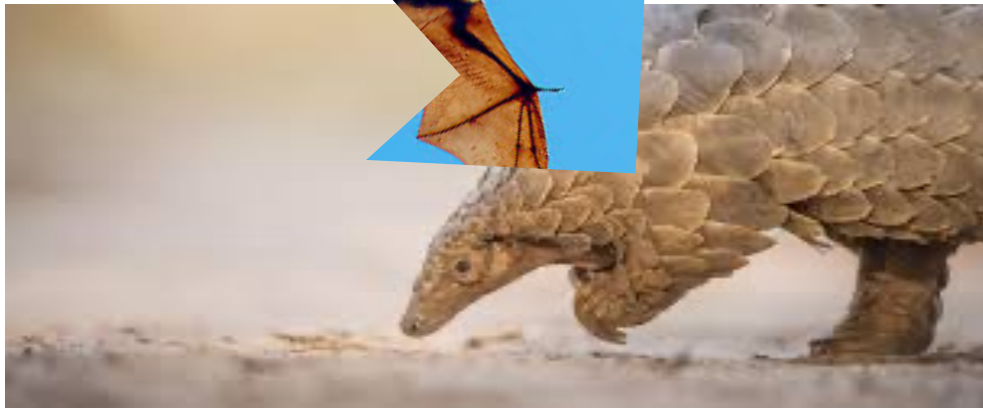
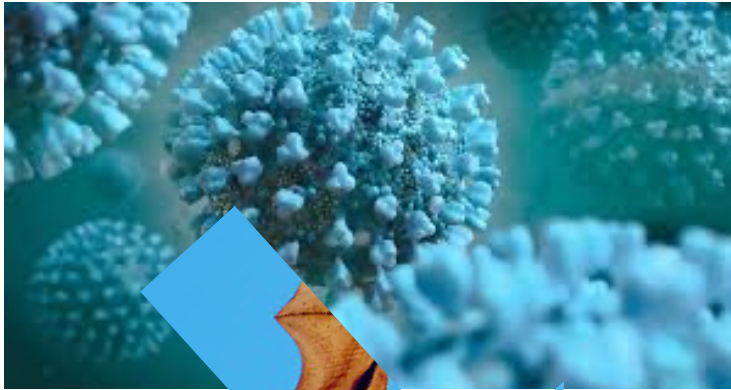


1. Introduction: Why do we need European law?
2. Three concepts at play: European Environmental Law
3. Sources
4. Environmental Policy and Climate change: Two sides of the same coin
5. Conflict: Trade v Environment
6. Achievements
7. Conclusion: A paradigmatic shift

1. Why do we need European law?

- + Cross-border impacts of polluting activities
- + Common playing field carved out through harmonisation (internal market)
- + Enhance competitiveness of European undertakings (Green Deal for Europe)
- + Protecting public goods in the economic sense
- + Protecting human health (air pollution caused more than 300 000 premature deaths in the EU-28 in 2018, EEA Air quality in Europe – 2020 report)

1. Why do we need European law?



SARS-Cov-2 is an Environmental Crisis Too

Human predation of wild fauna and the reduction in habitats have thus ended up creating new interfaces that favour the transmission of pathogens, mainly viruses, to humans.

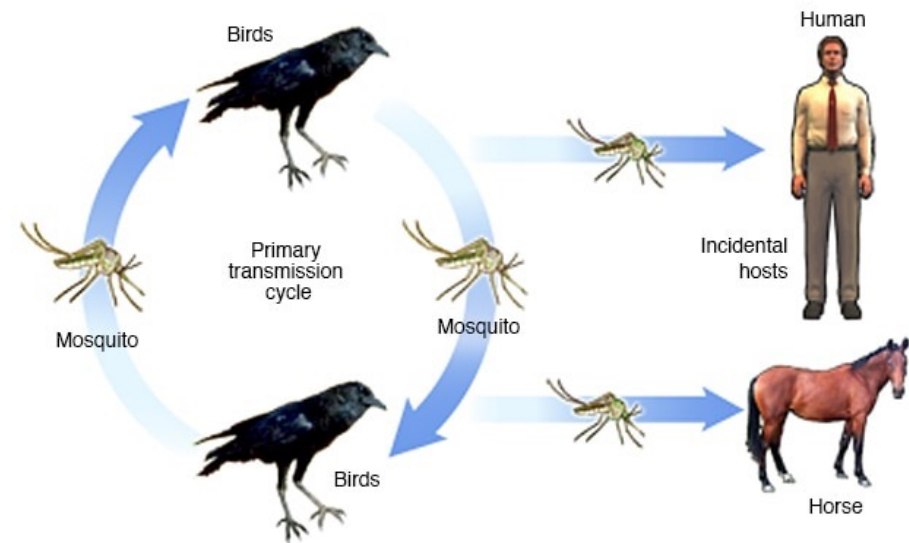
Domesticated animals and wild fauna thus constitute a reservoir for almost 80% of emerging human diseases (SARS-Cov, MERS-CovV, Ebola, Nipa).

These diseases are all **zoonotic** in origin.

CITES

Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein





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'Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements ...'

Art 2 Birds Directive



2. Three concepts at play

- + European
- + Environmental
- + Law

European: which boundaries?

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



HELCOM

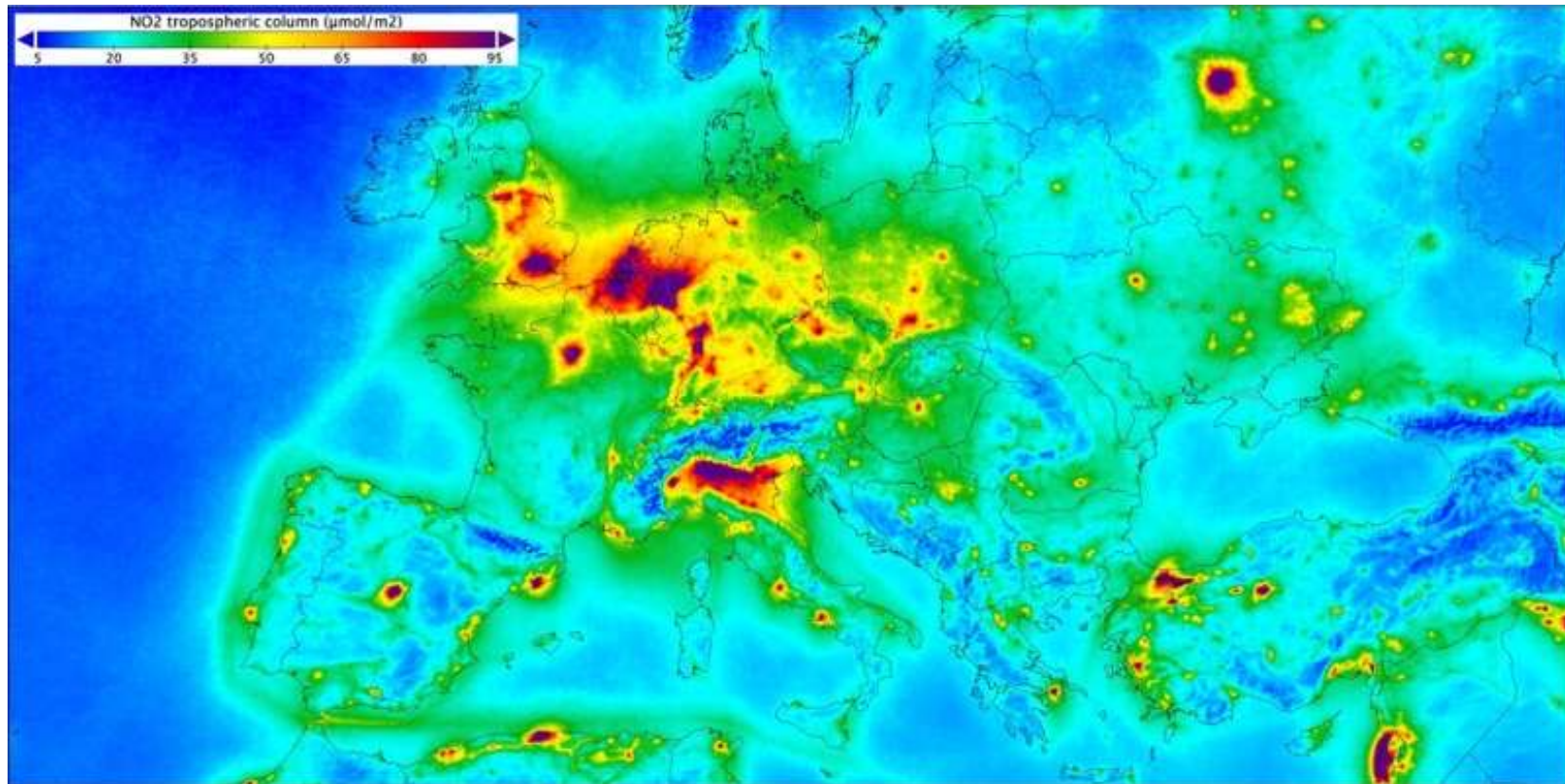


UNECE



Mediterranean Action Plan
Barcelona Convention

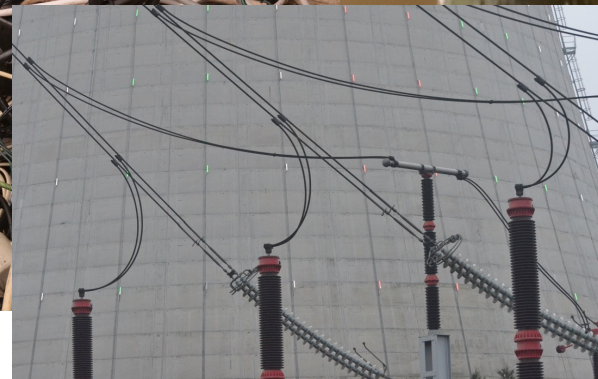
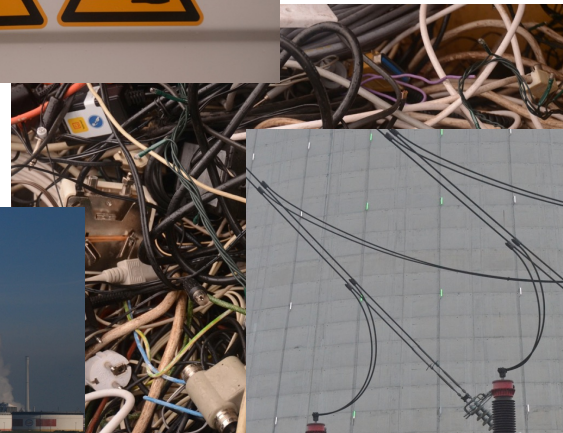
European: which boundaries?



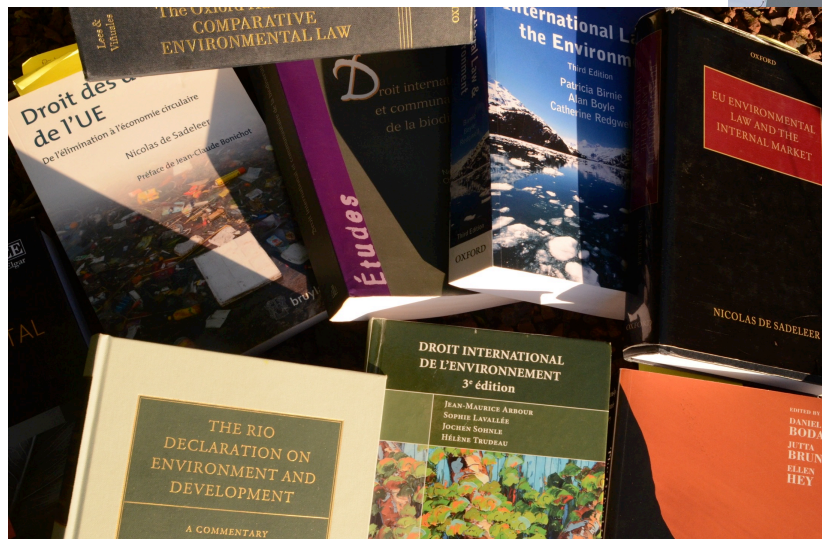
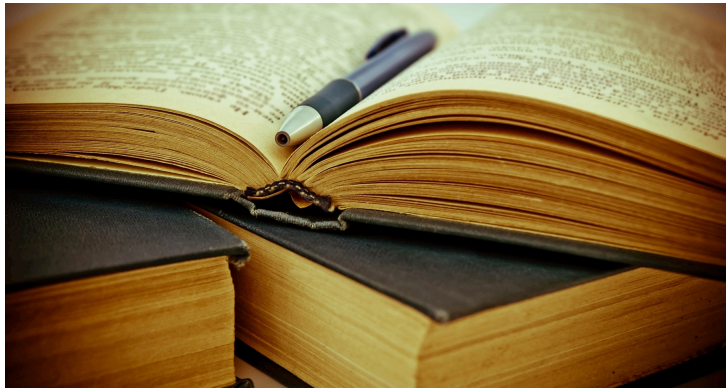
Nitrogen dioxide concentrations above the annual limit value (2018) Copernicus Sentinel-5P



Environment?

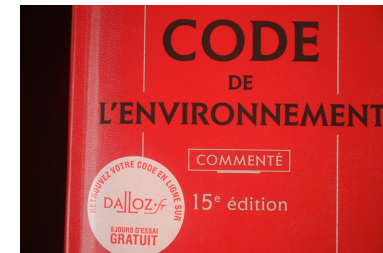


Law: from soft to hard?



Autonomy of the Legal System

- + Law operates as a system in the absence of human biases, politics, motivations, weaknesses and fallibility.
- + The **legal scholar** is expected to be an interpreter **within the legal system** but provide objectivity in interpreting the system.



- + In the **sciences**, the **scientist** is separate from the object under observation. He is expected to take the position of the **unbiased observer** and take observations of phenomenon unrelated to the observer.

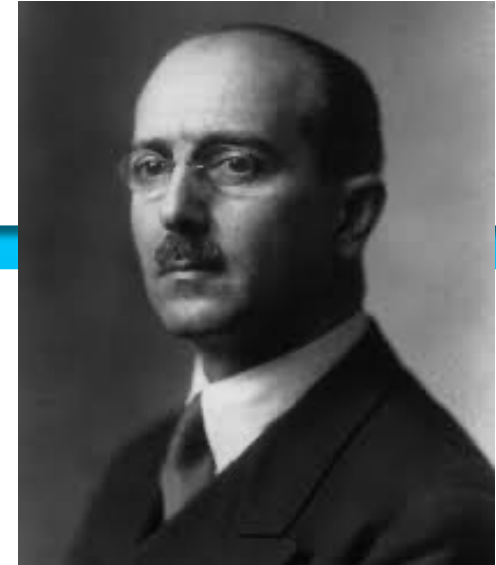
Urgenda: Hoge Raad's openness towards science

5.4.3. Blijkens de rechtspraak van het EHRM dient bij de uitleg en toepassing van het EVRM voorts rekening te worden gehouden met **wetenschappelijke inzichten** en algemeen aanvaarde standarde.

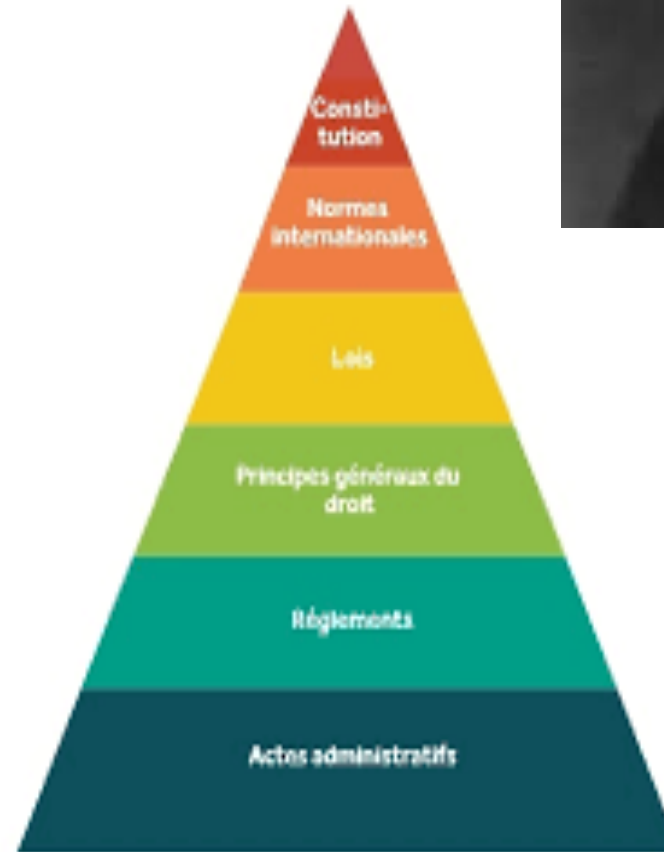
7.2.7 Uit het voorgaande volgt dat in de internationale gemeenschap een grote ma**consensus bestaat over de in AR₄ genoemde noodzaak van een reductie van de uitstoot van broeikasgassen** te van door (in elk geval) de Annex I-landen, van 25% tot 40% in 2020, teneinde de opwarming van de aarde beperkt te houden tot de – ten tijde van AR₄ – maximaal verantwoord geachte 2 °C.

+ The **IPCC AR₄ report** from 2007 played a decisive role in establishing the substance of the requirement of **due diligence** stemming from Articles 2-8 ECHR.

3. Sources



- + Primary
- + Secondary
- + Tertiary
- + Municipal



Primary Law: DNA



- + **Art. 2 TEU:** The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights,
- + **Art. 3, §3 TEU :** The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.
- + Article 3, §3 et 21, §2, d) TEU ; Articles 11, 191 à 193 TFEU ; Article 37 CDF

EU Environmental Objectives

(191(1) TFEU)

Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources, — promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

EU Environmental Principles

(191(2) TFEU)

« Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union.

It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. »

EU Environmental External Action

(191(4) TFEU)

« Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations.

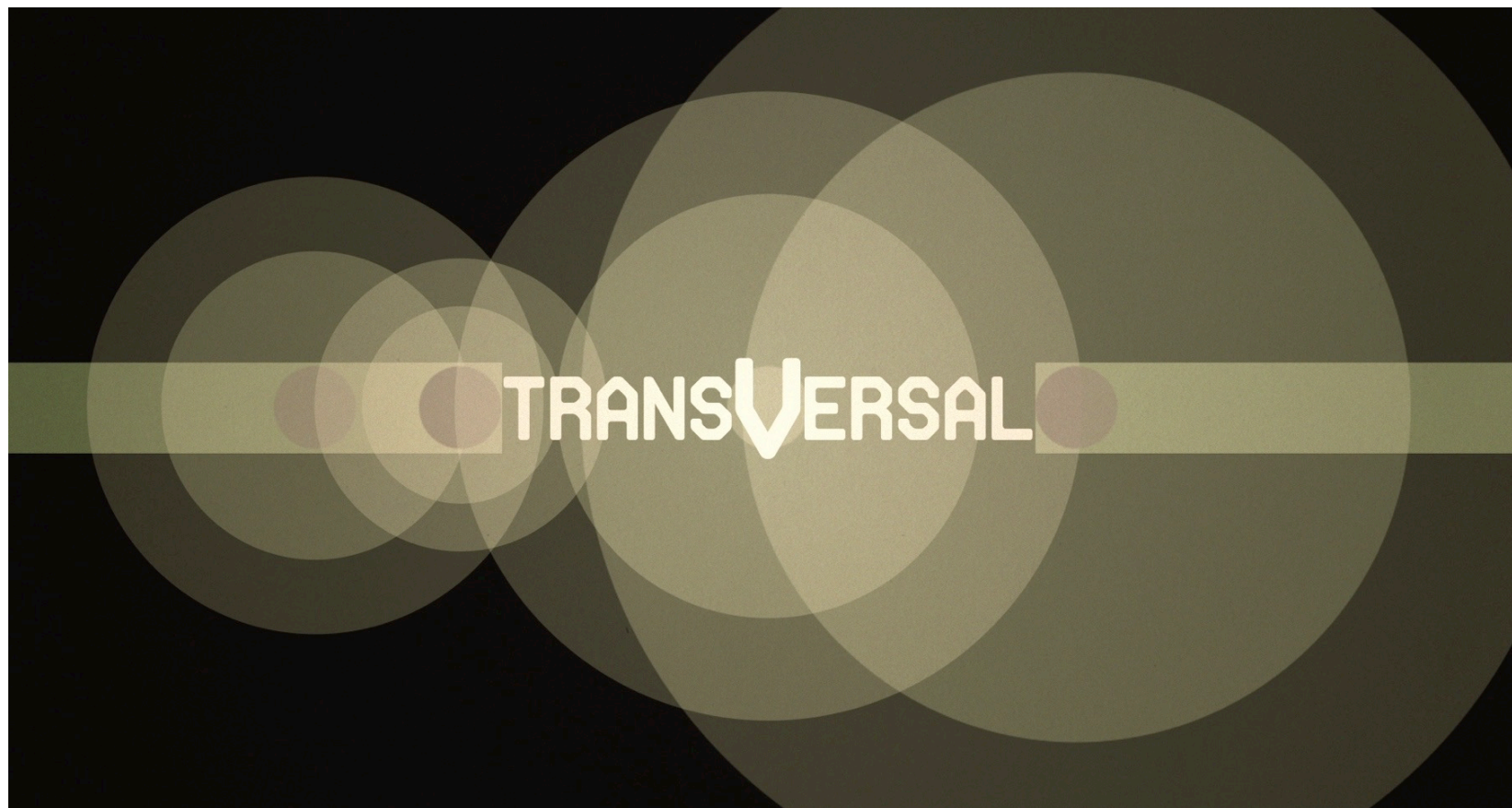
The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned. »

Procedure to adopt environmental rules (192(1) TFEU)

« The European Parliament and the Council, acting in accordance with the **ordinary legislative procedure** and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191 ».

Integration Principle

(11 TFEU et 37 CFR)



Integration Principle (11 TFEU et 37 CFR)

« Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development. »

Art. 5 TUE: Principe d'attribution des compétences

Politiques	Objet des mesures	Bases juridiques	Procédures
PAC	Production et commercialisation des produits agricoles	Article 43 TFUE	PLO ou PLS
Transports	Navigation maritime et aérienne	Article 100 TFUE	PLO (article 294 TFUE)
Fiscalité	Harmonisation des impôts indirects	Article 113 TFUE	PLS
Marché intérieur	Etablissement et du fonctionnement du marché intérieur	Article 114 TFUE	PLO (article 294 TFUE)
PCC	Mesures internes ou conventionnelles	Article 207, par. 4, TFUE	PLO (294 TFUE)
Environnement	Mesures générales	Article 192, par. 1, TFUE	PLO (article 294 TFUE)

How to draw the dividing line?

- + **Article 114 TFUE:** Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market
- + **Article 114 TFUE:** Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products
- + **Article 192 TFUE:** Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides

INSTRUMENTS TRANSVERSAUX

Evaluation des incidences (plans et programmes, projets).
Accès à l'information – Participation – Accès à la justice

NUISANCES

MILIEUX RECEPTEURS

INSTALLATIONS CLASSEES

IPPC
SEVESO
Biotechnologie

AIR

Objectifs de qualité
Normes d'émission
Normes de produits (CFC, engins, véhicules,
énergie, ...)

DECHETS

Normes de produits (piles, emballages, PCB-
PCT, DEEE)
Normes de procédés (décharges, incinérateurs)
Traitement (recyclage)
Mouvements transfrontières

EAU

Objectifs de qualité
Normes d'émission
Programmation

SUBSTANCES A RISQUE

Substances chimiques
Pesticides/Biocides
Asbeste

SOLS

Objectifs de qualité
Normes d'émission

BRUIT

Normes de produits
Normes d'émission
Programmation

FAUNE & FLORE

Espèces sauvages
Habitats naturels
Evaluation et gestion des risques de la
dissémination des OGM

INSTRUMENTS ECONOMIQUES

Eco-label - Eco-audit
Accords volontaires
Marchés de pollution (changements climatiques)

Command-and-Control and Market-based instruments

Command-and-Control instruments

- + Regulations on waste
- + Directives on ecosystems and wildlife
- + Directives/Regulations on waste
- + Regulations on products and substances

Market-based instruments

- + Directive on the Carbon market

Environmental Policy: Shared Competence (Article 4(2) e) TFEU)



**+ EU Decision-
making process**



**Member States
Environmental
Policies**

Secondary Law: Transversal Approach



Directive 2001/42/EC of the EP and of the Council on the assessment of the effects of certain plans and programmes on the environment



Directive 2003/4/EC of the EP and of the Council of 28 January 2003 on public access to environmental information



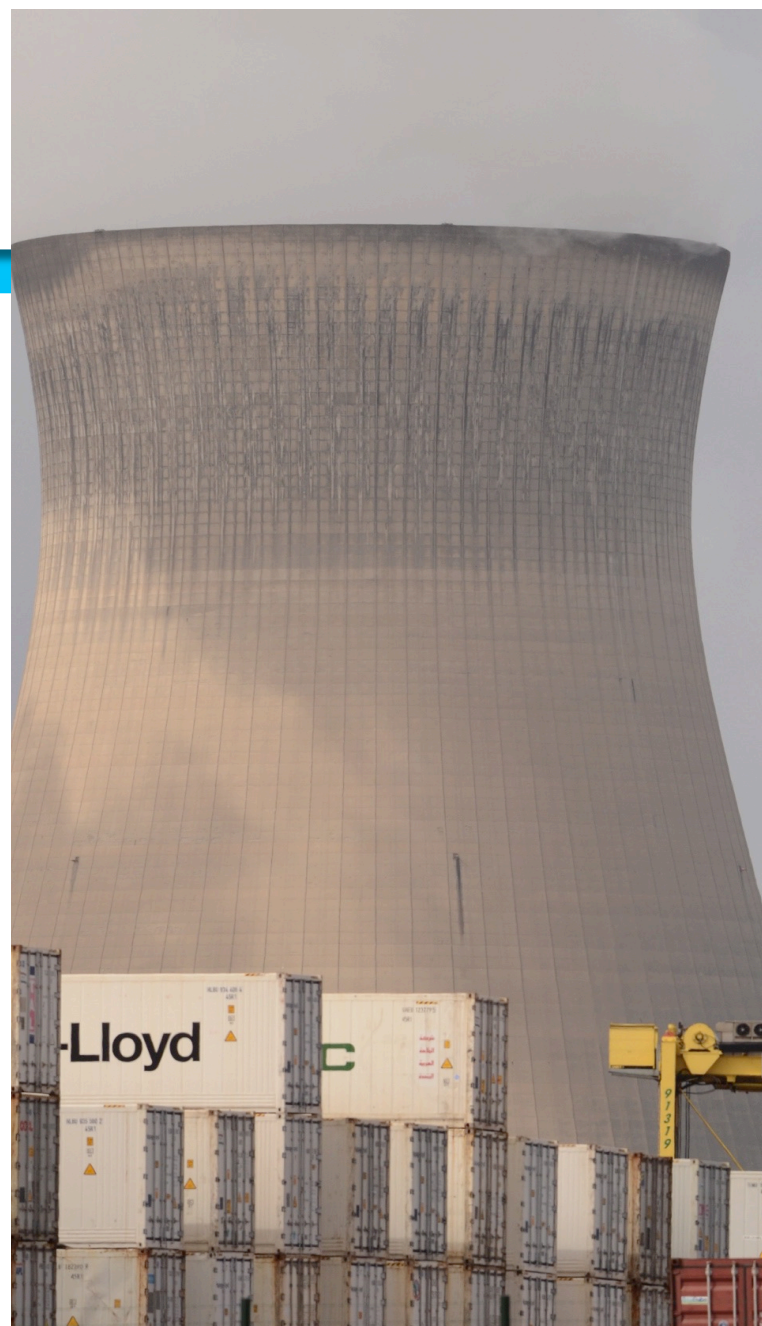
Directive 2011/92/EU of the EP and of the Council on the assessment of the effects of certain public and private projects on the environment

Secondary Law: Transversal Approach



CJUE, 29 juillet 2019, *Inter-Environnement Wallonie et Bond Beter Leefmilieu Vlaanderen*, C-411/17

CC, arrêt n°34/2020 du 5 mars 2020
Kerncentrale van Doel



Preventive approach



« the assessment under Article 6(3) of the Habitats Directive, should, in principle, be carried out as soon as the effects which the project in question is likely to have on a protected site are sufficiently identifiable.» (§ 143.)

Kerncentrale van Doel

Secondary Law: Transversal Approach

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage



Secondary Law: nature protection (Habitats Directive)



Hallerbos en nabije boscomplexen met brongebieden en heiden

Secondary Law: nature protection (Birds Directive)



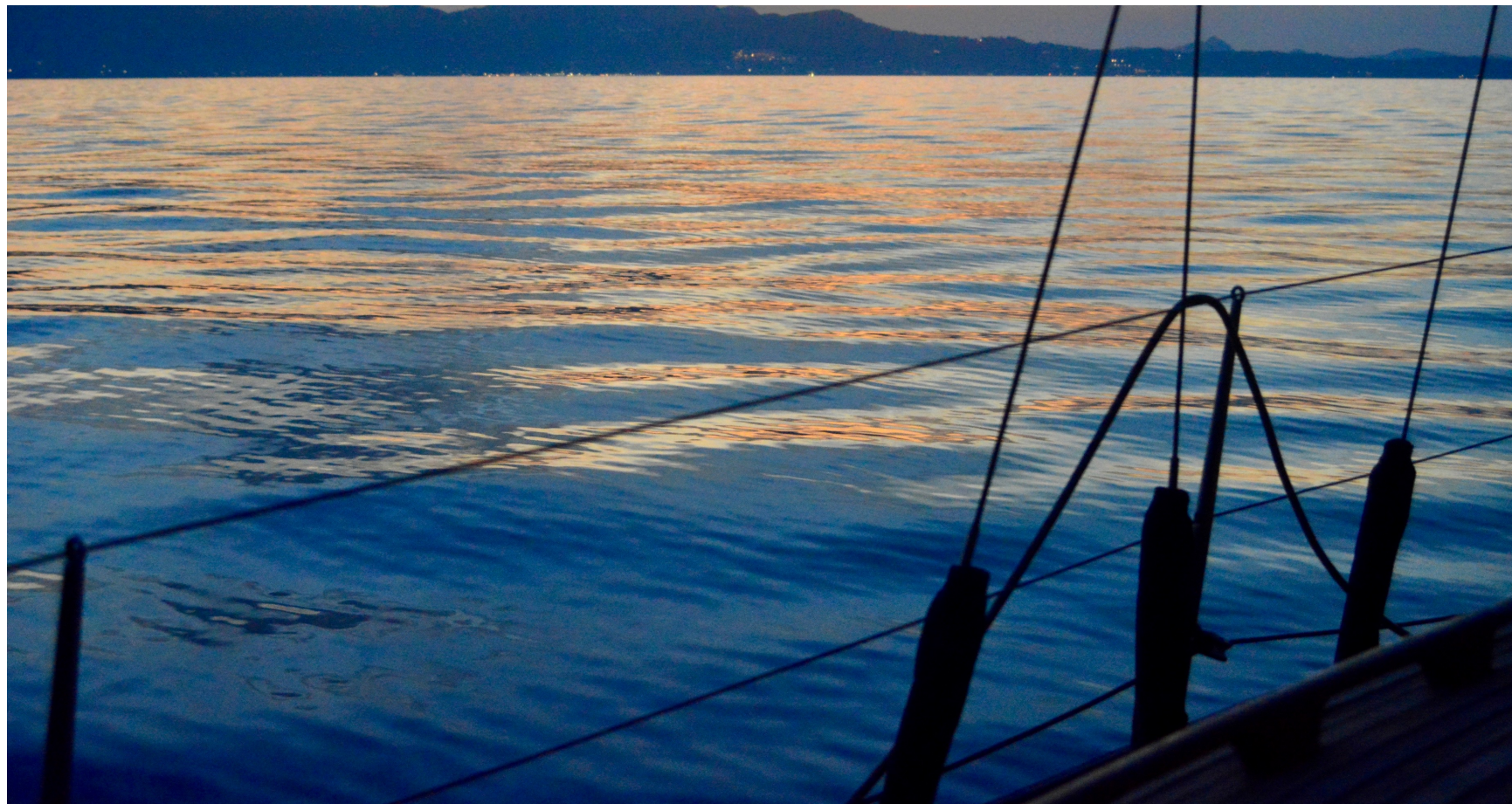
Rousserolle effarvate, *Acrocephalus scirpaceus*

Secondary Law: surface and underground water



Water Framework Directive-cadre 2000/60

Marine Strategy Framework Directive 2008/56/EC



Ionian Sea

Secondary Law: GMOs



Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified

Secondary Law: Listed Installation



Directive 2010/75/UE of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

Secondary Law: from Waste to Circular Economy



Waste Framework Directive 2008/98/CE

Secondary Law: Chemical substances

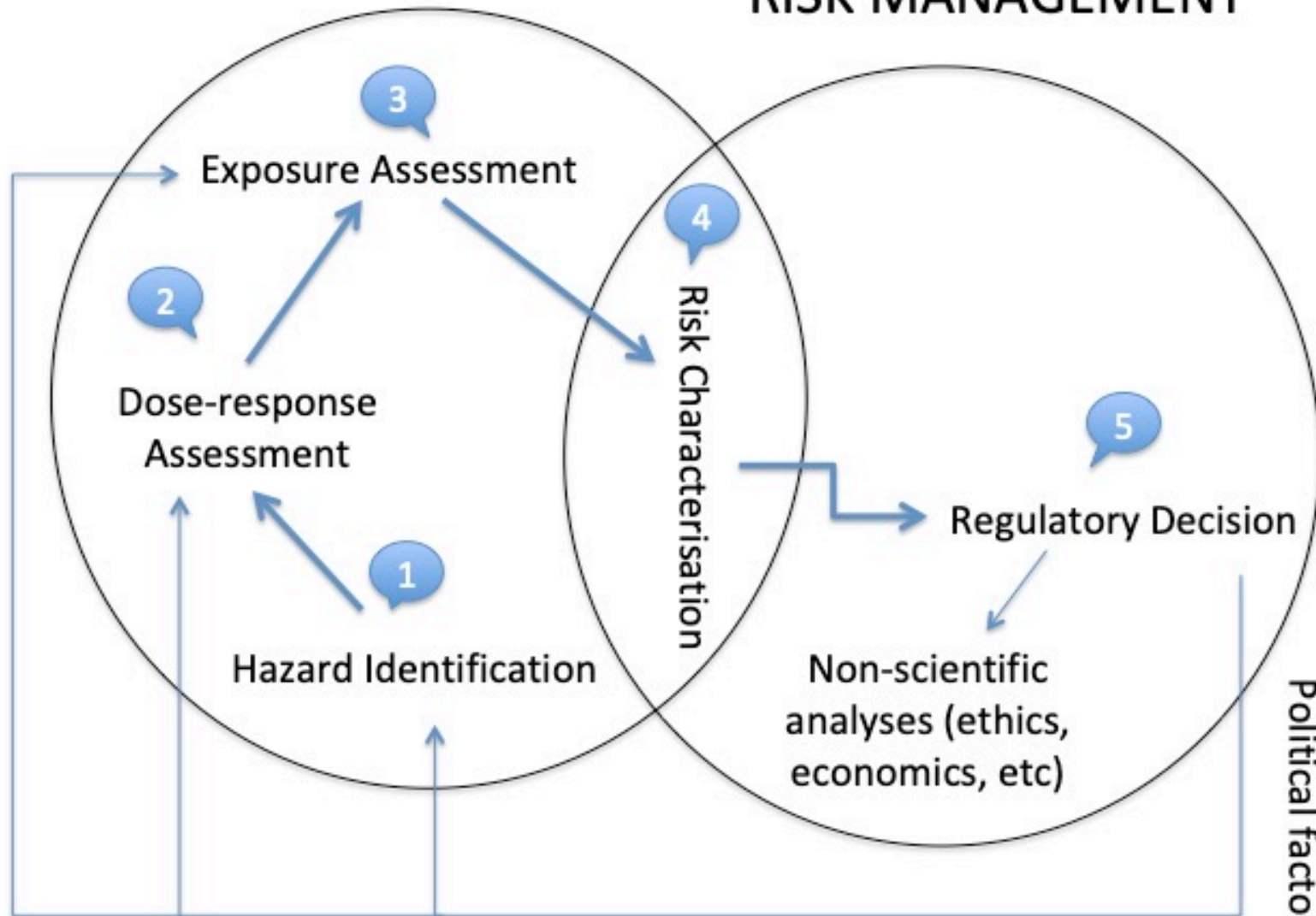


Regulation 1907/2006 Registration, Evaluation,
Authorisation and Restriction of Chemicals (REACH)

Substances	Acts	Regulatory approach
Existing and new substances	Regulation 1907/2006	Registration, evaluation, authorisation and restriction of chemicals (REACH)
Substances and mixtures	Regulation 1272/2008	Classification, labelling and packaging (CLP)
Pesticides	Regulation 1107/2009	Placing on the market
Pesticides	Directive 2009/128	Use
Biocides	Regulation 528/2012	Placing on the market
Cosmetics	Regulation 1223/2009	Product safety
Carcinogens	Directive 2004/37	Protection of workers from the risks related to exposure to carcinogens at work
Food	Regulation 178/2012	General principles of food law (GFL)

RISK ASSESSMENT

RISK MANAGEMENT



Continuous feedback through the risk analysis process

Evaluation des risques

Identification des dangers :
identification des impacts d'un agent biologique, chimique ou physique sur la santé ou l'environnement

Caractérisation des dangers :
détermination de la sévérité des impacts au moyen d'une relation dose/réponse

Appréciation de l'exposition :
détermination de l'exposition des groupes à risque à la substance ou à l'agent

Caractérisation des risques :
probabilité de la fréquence et de la gravité des effets néfastes connus ou potentiels de l'agent ou de la substance

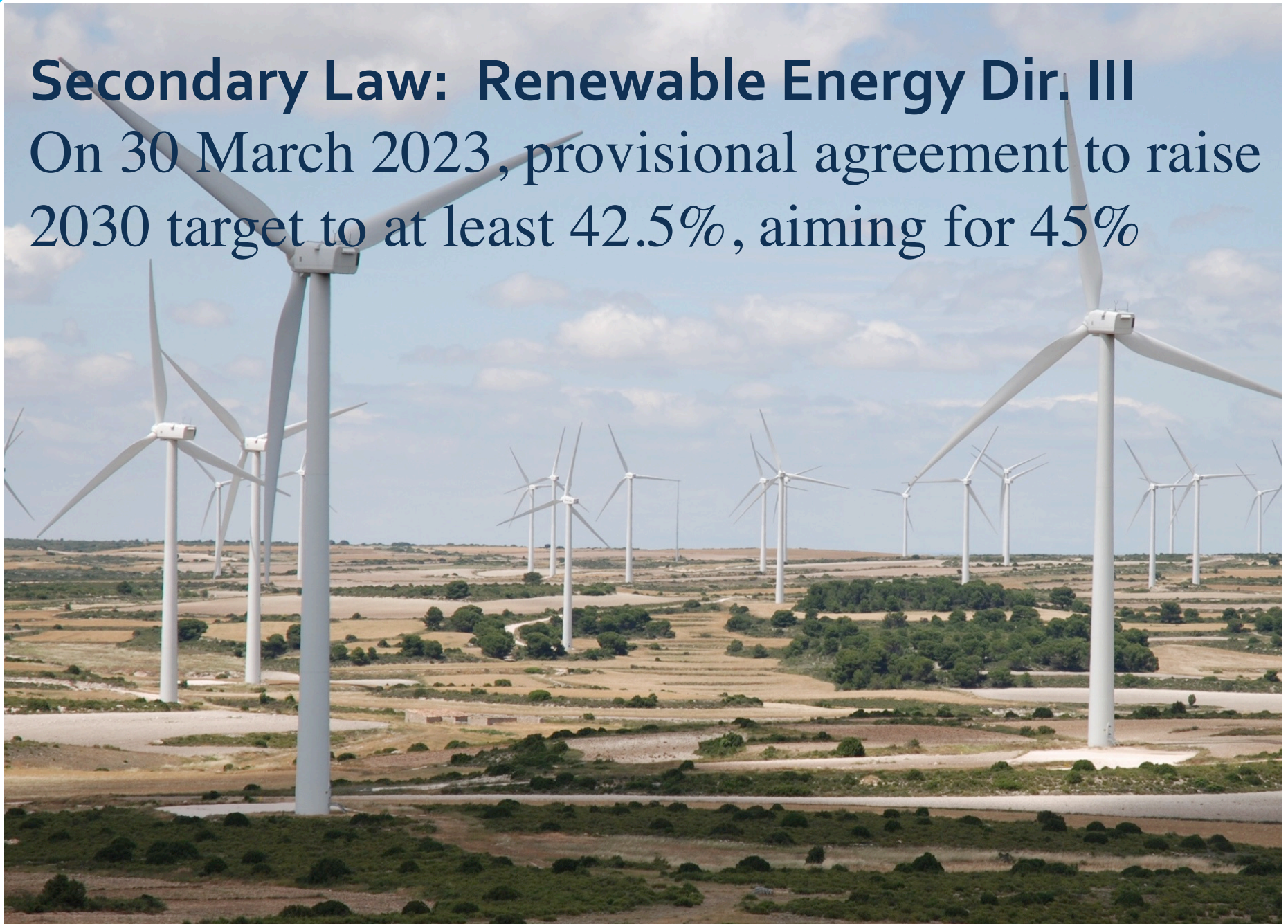


Gestion des risques

Sur la base des résultats de l'évaluation, détermination par l'autorité d'un niveau de risque acceptable

Secondary Law: Renewable Energy Dir. III

On 30 March 2023, provisional agreement to raise 2030 target to at least 42.5%, aiming for 45%





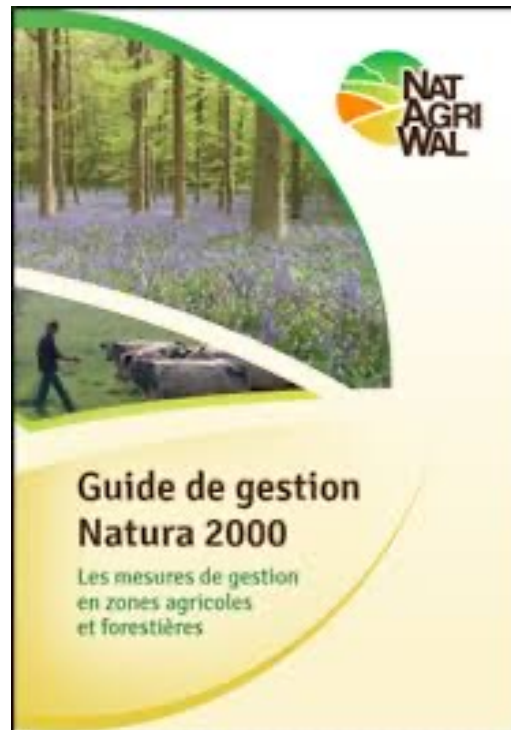
Secondary Law: Carbon market

Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the EU

	Autorisation administrative	Quota
Objet	Autorisation permettant à l'installation d'émettre des GES	Octroi d'un droit à émettre une tonne de CO ₂ ou d'autres GES, au cours d'une période spécifiée, lequel est susceptible de faire l'objet de transactions commerciales
Titulaire	Octroyée <i>intuitu personae</i> à l'exploitant	Octroyé à l'exploitant d'une ou de plusieurs installations
Seuils	Ne fixe pas des limites (sauf si « <i>hot spot</i> »)	Accordé en fonction des émissions historiques (<i>grandfathering</i>) ou suivant la méthode du <i>benchmarking</i>
Obligation de résultat	Le nombre de tonnes de CO ₂ émises doit correspondre au budget de quotas initialement alloués par les autorités nationales dans le cadre du PNA	Flexibilité
Durée	Illimitée, mais obligation de réexamen tous les cinq ans	Limité à la période considérée, annulé à la fin de chaque année (voire à la fin de la période pour les quotas non utilisés)

Tertiary Law

- + Comitology
- + Guidelines
- + Guides



Case C-24/19, 25 June 2020, *Organisatie voor Duurzame Energie Vlaanderen VZW*

Omzendbrief EME/2006/01-RO/2006/02 (Circular EME/2006/01-RO/2006/02), entitled 'Assessment framework and conditions for the installation of wind turbines'

- + 'While it is uncertain whether an instrument such as the Circular of 2006 is capable of producing compulsory legal effects for third parties, that circular cannot, however, subject to verification by the referring court as to its precise legal effect, be treated in the same way as provisions of purely indicative value ...' (§76).
- + **The concept of 'plans and programmes' (Article 2(a) of Directive 2001/42/EC) covers an order and circular, adopted by the government.**

NUISANCES

ECOSYSTEMS

LISTED INSTALLATIONS
IED, SEVESO I, II, and III

AIR
Environmental quality standards (EQS)
Emission limit values (ELV)
Programmes
Product standards (CFC, fuels, vehicles, etc.)

WASTE
Product standards (batteries, packaging, WEEE)
Operating standards (land-fills, incinerators)
Waste management operations (sorting, recycling, etc.)
Transfrontier movements

WATER
EQS
ELV
Programmes

HAZARDOUS SUBSTANCES
Chemical substances,
Pesticides, Biocides, Asbestos

SOILS
EQS
ELV
Programmes

NOISE
Product standards
EQS
ELV
Programmes

WILDLIFE
Species and habitats protection
Deliberate release of GMOs

ECONOMIC INSTRUMENTS
Eco-label - Eco-audit
Voluntary agreements
Cap-and-trade schemes

Listed installations and products



Environmental quality standards (EOS), or quality targets, means 'the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof'. These standards provide guarantees of the quality of environmental receptors (water, air, soil).



Emission limit values (ELV), or disposal standards, limiting the direct or indirect release of substances, vibrations, heat or noise and other pollutants from emitted by fixed polluting facilities (plants, facilities, industries) or diffuse sources into air, water or land.



Operating standards call for the improvement of industrial techniques, in particular through the use of new technologies. They are guided by the principle of the reduction of pollution at source.



Product standards are those which set limits on pollution or nuisance levels and may not be exceeded both as regards the product's composition as well as its emissions.

TYOLOGY OF ENVIRONNEMENTAL STANDARDS

	EQS	ELV	Process standards	Product standards
Objective	Set of requirements which must be fulfilled at a given time by a given environment (air, water, soils)	Standards expressed in terms of certain specific parameters, concentration and/or level of an emission, limiting the pollutants emitted by fixed polluting facilities with a view to protecting ecosystems and human health	Ensure that plant operations are conducted in a safe, effective, and professional manner, in accordance with safety requirements	Standards setting limits on pollution or nuisance levels
Addressees	Authorities	Plant operator	Plant operator	Producer and importer of the substance or the product
Level of stringency	Low	Inasmuch the operator does not exceed the ELVs, he is free to choose the technology	The operator is called on to apply BATs	Standards not to be exceeded both as regards the product's composition as well as its emissions
Sanctions	Administrative measures	Administrative and criminal sanctions	Administrative and criminal sanctions	Administrative and criminal sanctions

II. REGULATING LISTED INSTALLATIONS AND PRODUCTS

LEGAL INSTRUMENTS	LISTED INSTALLATIONS	PRODUITS
Legal bases	Article 192 TFEU	Article 114 TFEU
Instruments	Framework directives	Regulations regulating the placing on the market or the use of hazardous products and substances
Integration	Decentralisation	Centralisation at EU level
Principles	Prevention, precaution, and rectification at source	Prevention, precaution, and substitution
Ex ante assessments	SEA and EIA	Substance risk assessments
Authorisation	Licensing autorisation No installation is operated without a permit	No product can be placed on the market without a prior authorisation
Restrictions	Process standards likely to be underpinned by EQS	Restrictions on the sale or the use of hazardous products and substances
Participation	Public enquiry Guidance documents on BAT	Public enquiry prior
Information for the public	Emergency plans (Seveso) Access to information Pollutants register	Informations regarding the environmental risks through labelling
Control	From cradle to grave	Life-cycle approach
State aids	Restricted to investments aiming at increasing the level of environmental protection	Prohibited, but R&D
Ex post measures	Site closure subject to specific remedial measures	End-of-life, by-products, and waste management requirements

4. Environmental Policy and Climate change

Two sides of the
same coin



GHG	ANTHROPOGENIC SOURCES	SPECIFIC EU ACTS
Carbon Dioxide (CO₂)	By-product of burning fossil fuels, biomass, land use change, industrial process (e.g. cement)	LULUCF Regulation (2018/841); CO ₂ emission performance standards for vehicles (Regulations 2019/631 ; 2023/851); Regulation type-approval of motor vehicles (Euro 7)
Methane (CH₄)	Hydrocarbon fuels, animal husbandry, agriculture, landfills	LULUCF Regulation (2018/841); Landfill Directive (1999/31/EC); Regulation type-approval of motor vehicles (Euro 7)
Nitrous Oxide (N₂O)	Agriculture (nitrogenous fertilizers), sewage, treatment and waste management, chemicals processing of paper and wood, the energy sector	Industrial Emissions Directive (2010/75/EU)

GHG	ANTHROPOGENIC SOURCES	SPECIFIC EU ACTS
Hydrofluorocarbons (HFCs)	Solvents, refrigerants (household and industrial), air conditioning	Fluorinated greenhouse gases (F-gases) regulation (517/2014/EU) To be replaced
Perfluorocarbons (PFCs)	Processing of metals (primary aluminum)	(F-gases) regulation (517/2014/EU)
Sulfur hexafluoride (SF₆)	Production of magnesium and aluminum	EU ban under the F-Gas Regulation, except where there are now suitable alternatives (electricity industry).
Nitrogen oxides (NO_x, NO₂) -	Transport (exhaust) Pulp and paper industry, energy industries and the metal industry	UN -CLRTAP Industrial Emissions Directive (2010/75/EU) National Emissions Ceilings Directive (2001/81/EC) Regulation type-approval of motor vehicles (Euro 7)

GHG	ANTHROPOGENIC SOURCES	SPECIFIC EU ACTS
Sulphur Oxides (SO _x)	Processing industry (e.g. pulp and paper and metal), Electric plants burning coal and heating of buildings	UN -CLRTAP Industrial Emissions Directive (2010/75/EU) National Emissions Ceilings Directive (2001/81/EC)
Ammonia (NH ₃)	Production of fertilizers	National Emissions Ceilings Directive (2001/81/EC) Regulation type-approval of motor vehicles (Euro 7)
PM _{2,5} and PM ₁₀	Motor vehicle exhaust	National Emissions Ceilings Directive (2001/81/EC); Regulation type-approval of motor vehicles (Euro 7)

GHG	ANTHROPOGENIC SOURCES	SPECIFIC EU ACTS
Carbon monoxide (CO)	Motor vehicle exhaust, industrial activities (metal industry), working machinery and heating of buildings	UN -CLRTAP Industrial Emissions Directive (2010/75/EU); Regulation type-approval of motor vehicles (Euro 7)
Ozone (O ₃)	Photochemical reactions involving mainly NO _x and volatile organic compounds (VOCs)	Regulation (EC) 1005/2009 on substances that deplete the ozone layer
Non methane volatile organic compounds (NMVOCs)	Combustion plants, solvent use	National Emissions Ceilings Directive (2001/81/EC)

5. How to concile trade and environnement



Free Movement of Goods and Domestic Environmental Measures

Article 34-35 TFUE Free Movement of Goods



Articles 36 TFUE Domestic restrictions

Prohibitions or restrictions on imports, exports or goods in transit may be justified on grounds of ‘protection of health and life of humans, animals or plants’

or in virtue of mandatory requirement related to the protection of the environment

6. Achievements

We may thank half a century of EU environmental law for

- + a steady increase of protected areas within the Natura 2000 network,
- + the world's biggest Carbon market,
- + a decrease of GHG in the atmosphere,
- + the improvement of air and water quality,
- + more energy efficiency,

6. Achievements and Challenges

- + a greater proportion of renewables in the energy mix,
- + safer chemicals and pesticides,
- + increased recycling rates.

But the shift towards sustainability remains a distant goal!

The forces driving the environmental degradation are either undiminished or gaining strength.

7. Conclusion: A paradigmatic shift?

How will the EU institutions, whose mission is to guarantee the proper functioning of the internal market and free competition, and whose compass remains GDP growth, be able to handle a genuine economic transition?





Further Reading

- + N de Sadeleer and J Godfroid, 'The Story Behind Covid-19: Animal Diseases at the Crossroads of Wildlife, Livestock and Human Health', in *European Journal of Risk Regulation*, 2020.
- + N de Sadeleer, *EU Environmental Law and the Internal Market*, Oxford, OUP, 2014, 499 p.
- + N de Sadeleer *Environmental Principles*, 2nd ed., Oxford, OUP, 2022, 540 p.