The Brussels Office Law Reform Update Series:

EU legislation on environmental law

May 2010

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I. WHAT'S NEW

On 31 March the Commission published its Work Programme for 2010 and beyond. In it the Commission noted several initiatives in the environment area, which are detailed through the update.¹

On 4 May the Parliament’s Environment Committee voted on the recast of the IPPC Directive.

A Communication published by the Commission on 18 May looks at the management of bio-waste within the EU.

On 15 March, the Environment Council failed to come to an agreement on the proposed Directive for a framework on the protection of soil. Some Member States reiterated their opposition while some ministers called for a fresh approach to taking this forward.

On 1 March Commissioner Šemeta stated his intention to finalise the revision of the Energy Taxation Directive. The issue of a carbon tax will feature in a Commission Communication to be published on 26 May on how to improve greenhouse-gas emissions targets by 2020.

On 15 April the Council adopted a position at first reading of the energy labelling Directive. The Parliament is expected to vote to agree this position on 19 May.

Council conclusions on the financing of climate change were adopted by a meeting of EU finance ministers on 16 March. The Commission set out a strategy to re-invigorate action on climate change after Copenhagen on 9 March. Environment Council conclusions on climate change were adopted on 15 March and the European Council published conclusions at its 25/26 March meeting.

Council conclusions on biodiversity post 2010 were published on 16 March. The Commission also launched a campaign on biodiversity called ‘We are all in this together’ on 9 April. The Commission launched a consultation on the Green paper on Forest Protection and Information in the EU: Preparing Forest for Climate Change which is open until 31 July 2010.

At an exchange of views with the European Parliament Committee on Environment, Public Health and Food Safety on 7 April Commissioner Potočnik emphasised the importance of enforcing EU environmental legislation instead of necessarily creating more.


* Please note that changes made to the text since the last edition are in bold italics.

### Proposal Summary

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**Proposals in the pipeline**

| 1. Enforcement of environment law | Communication on the implementation and enforcement of EC environmental law |

| 2. Urban Transport | Communication on European Policy for urban transport. |

**To be implemented**

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II. INTRODUCTION

Environmental action by the Community began in 1972 with four successive action programmes, based on a vertical and sectoral approach to ecological problems. During this period, the Community adopted some 200 pieces of legislation, chiefly concerned with limiting pollution by introducing minimum standards, notably for waste management, water pollution and air pollution. Community action developed over the years until the Treaty on European Union and the Treaty of Amsterdam, where the principle of sustainable development was set as one of the EU’s aims.

On 1 December 2009 the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force. The Treaty of Lisbon retains environmental protection as one of the Union’s objectives. Article 11 of the Treaty on the Functioning of the European Union (TFEU, the Treaty establishing the European Community as amended) provides that environmental protection requirements must be integrated into the definition and implementation of EU policies and activities. Article 191(1) TFEU provides that the EU's environmental policy shall, among other things, promote measures at international level to deal with regional or worldwide environmental problems and, in particular, combating climate change. This is the first time that one of the Treaties has made reference to climate change. On 10 February 2010 Janez Potočnik of Slovenia took office as the new Environment Commissioner and Connie Hedegaard of Denmark became the EU's first Climate Action Commissioner.

The Commission announced on 17 February 2010 that it had decided to create a new Directorate-General for Climate Action, to be called DG CLIM, under Ms Hedegaard and also to transfer certain activities from DG Environment to other Directorates General within the Commission. Going forward biotechnology, pesticides and health are transferred to DG Health and Consumers (SANCO) and DG Humanitarian Aid (ECHO) takes over responsibilities for civil protection.

The Sixth Community Environment Action Programme (the “6th EAP”) sets out the priorities for the European Community up to 2010. The mid-term review of the 6th EAP confirms that it remains the correct framework for EU action in the field of environment until 2012. Four areas are highlighted by the 6th EAP: climate change, nature and biodiversity, environment and health, and the management of natural resources and waste. Measures to achieve these priorities are outlined: improving the application of environmental legislation, working together with the market and citizens and ensuring that other Community policies take greater account of environmental considerations. The Action Programme also calls for the preparation of seven thematic strategies on: air pollution; the marine environment; the sustainable use of resources; waste prevention and recycling; the sustainable use of pesticides; soil protection; and the urban environment. Most of these strategies have now been proposed by the Commission, only the thematic strategy on soil remains to be published. The air, waste and pesticides strategies in particular review and build on substantial bodies of existing Community legislation and other initiatives. The following outlines recent developments in relation to EU environmental laws that are of relevance to solicitors and other practitioners.

On 18 March 2010 the Commission continued infringement proceedings against the UK, complaining that the costs of bringing legal proceedings to challenge environment-related decisions were too high. An initial letter was sent to the UK in 2007. The

Commission considers that a number of pieces of EU legislation require Member States to ensure that the public can challenge environmental decisions that relate to them and that this process is affordable. The Commission points in particular to the cost of proceedings and the potential financial consequences of losing challenges as reasons for preventing NGOs and individuals from bringing claims against public bodies. The UK should respond within two months.6

III. IN PROGRESS

1. Industrial emissions (IPPC Directive)


Background
Following a two-year review of the IPPC Directive, the Commission published a new proposed Directive to replace and update existing IPPC rules and consolidate legislation that is currently found in a handful of sectoral Directives (Directives 96/61, 88/609, 2001/80, 1999/13 and 2000/76). The overarching principle of the legislation is that operators use the most cost-effective techniques to achieve a high level of environmental protection i.e. “best available techniques” (BATs). For further details of the review, please refer to the June 2009 update.

On 10 March 2009 the Parliament’s plenary session approved a legislative resolution on the proposal. For details of the resolution, please refer to June 2009. The Parliament also supported the need to improve the BAT reference documents.

On 25 June 2009, the Environment Council reached political agreement with a view to the subsequent adoption of a Common Position. In particular the Council discussed the issue of large combustion plants. The Council agreed that the current BAT should apply to new large combustion plants two years after the entry into force of the proposed Directive and to existing

11 Press release:
   Register: http://prtr.ec.europa.eu/
plants from 2016, while allowing a transitional period. It also revised the procedure for adopting BAT reference documents while containing translation costs. On 11 September 2009, the Council's lawyer linguists met to finalise the text. On 16 November 2009 the proposed text for a Council common position on the Directive was published.

On 9 November 2009 the Commission launched a new European pollutant release and transfer register – E-PRTR. The register contains information about the emissions of pollutants to air, water and land by industrial facilities throughout Europe.

The Danish, Irish and Austrian Council delegations announced on 5 February 2010 that they regretted that "the Council position does not hold a more ambitious line for the protection of human health and the environment, and a better basis for the more consistent and uniform implementation of policy to create a more equal and level playing field across the EU." On 15 February 2010 the Council formally adopted its common position on the recast of the IPCC Directive. Germany, Austria, Denmark and Ireland abstained. The Council's position strengthens the requirement on Member States to implement emissions limits associated with the use of Best Available Techniques (BAT) across the EU. It also reinforces the rules for new large combustion plants in that they will be required to apply current BAT within two years of the entry into force of the Directive, significantly earlier than the Commission proposed. Existing large combustion plants would be required to comply with current BAT from 2016. Member States that are heavily reliant on fossil fuels (including the UK and Poland), however, secured a transition period until the end of 2020. A new Article 73 provides for three yearly reviews of the Directive by the Commission and also for the Commission to report, by 31 December 2012, on whether further regulation is needed to control other emissions, including emissions from the combustion of fuels in installations with a total rated thermal input below 50 MW.

On 4 May 2010, the Parliament’s Environment Committee voted on the text at second reading. The Committee voted to extend to 30 June 2019 the date by which certain plants would have to meet the stricter emissions limits. The Committee also voted to use the process of delegating powers to the Commission to adopt measures on the BAT reference documents and BAT. Transitional periods could also apply from 2016 until 2019 for plants that have been licensed to operate since 2002, by way of transitional national plans, which will set annual emissions limits that will be lowered each year. Plants operating less than 12,500 hours per year will be able to apply for an exemption from the new rules until 2020. A number of working groups have been held in the Council since this vote in order to discuss Member States’ reactions to the amendments adopted and examine the possibility to accept them.

Next steps
The vote in Parliament’s plenary session is foreseen for 6 July 2010. If Parliament and Council are not able to agree on a text before Parliament’s vote, a formal conciliation between the institutions will take place to find agreement at third reading.

2. Environment and energy policy instruments

Proposal: Green Paper on market-based instruments for environment and energy related policy purposes.


**Related issues:** Commission Recommendation 9 October 2009\(^\text{23}\), accompanying impact assessment\(^\text{24}\) and impact assessment summary.\(^\text{25}\) Environment Council Conclusions 21 October 2009.\(^\text{26}\) Energy Council conclusions 18 December 2009.\(^\text{27}\)

**Background**
The Green Paper was a joint project of the Taxation and Environment departments of the Commission and is aimed at launching the debate on further use of market-based instruments (MBIs) to support environment and energy policy. The paper discusses how taxes, tradable emissions rights and other market instruments can be put to wider and more effective use. Replies to the consultation contained within the Green Paper were sought by 31 July 2007.

**Progress**

On 8 January 2010 the Spanish Presidency, which took over the six-monthly rotating presidency from Sweden, published its work programme for the Economic and Financial Affairs Council. It states that it considers it a priority to accelerate discussion and negotiations to revise the Energy Taxation Directive. This was reiterated by EU tax Commissioner Algirdas Šemeta who stated that the Energy Taxation Directive is one of his priorities and a proposal is expected in the coming months.

**Next Steps**

On 1 March 2010 Commissioner Šemeta, the new European Commissioner for taxation, stated his intention to finalise the revision of the Energy Taxation Directive. A spokesperson for Šemeta stated that he intends to propose a minimum rate of tax on carbon across the whole EU. The Commission Work Programme sets out that the Commission will work to revise the Energy Taxation Directive with an aim to further the Europe 2020 strategy on climate change and to complement the European Emissions Trading System and tax energy products based on their energy content and CO2 performance.

\(^{19}\)http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_conferences/low_carbon/index_en.htm
Related Issues

On 9 October 2009 the Commission published a Recommendation on mobilising Information and Communications Technologies (ICT) to facilitate the transition to an energy-efficient, low-carbon economy. For details of the Recommendation please refer to the October 2009 update. The Transport, Telecommunication and Energy Council met on 18 December 2009 and recognised the importance of ICT in assisting the EU to emerge from the global financial crisis and for creating a green, competitive economy. It observed, however, that a holistic strategy still needs to be developed in this sector and that a number of barriers to the implementation of the ICT strategy exist, which will need to be addressed as a matter of urgency. It called on the Commission and Member States to set ambitious targets for the use of ICT in reducing the EU’s carbon footprint.

On 24 November 2009 the Commission published a consultation paper on the Future "EU 2020" Strategy. Among other things, the paper looks at transitioning the EU’s economy to a greener, more sustainable economy, by way of targeted regulation (e.g. promoting energy-efficient products and systems), through emission trading, tax reform and procurement policies, and through targeting our research and innovation budgets to a greener and more competitive economy. The Commission invited comments on the document by 15 January 2010.

The Competitiveness Council met on 4 December 2009 and also emphasised the importance of creating an eco-efficient economy in Europe. It stressed the importance of stimulating green public procurement and noted the Commission’s guidance on common criteria for green public procurement. It also recalled the importance of eco-innovation, energy-efficiency and technology and called on both the Commission and Member States to be more active in encouraging development in these areas.

3. Thematic Strategy on soil

Proposal: Thematic strategy on soil protection.


Background

The thematic strategy on soil will aim to pursue the aims of protecting the environment and preserving natural resources. The strategy comprises three parts: a Communication setting the soil protection policy; a proposal for a “Soil Framework Directive”; and an analysis of the environmental, economic and social impacts of the proposals.

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Progress

In its Communication of 22 September 2006, the Commission set out its strategy on action to reverse current trends and to preserve, protect and restore soil. The strategy, together with a proposal for a Directive, would require Member States to identify endangered and contaminated zones, define targets for reducing risks in these areas and draw up soil restoration programmes. The new regulation will also require all individuals selling land on which potentially polluting activities have been conducted to present the buyer and/or the relevant administration with a soil status report.

On 14 November 2007 Parliament passed the proposal at first reading, with amendments. For details, please refer to the June 2009 update.

On 25 June 2009, the Environment Council discussed a Presidency progress report on the proposed Directive. The report notes that at its meeting on 10 June 2009, the Committee of Permanent Representatives discussed the latest Presidency compromise text and found that there was no prospect of reaching political agreement on the text. The report outlined the main outstanding issues addressed in the latest Presidency compromise proposal including concerns regarding: current/approved future use of degraded soils; integration; identification of priority areas; soil contamination; soil status reports; and use of comitology procedure.

On 27 January 2010 Spain’s Environment Minister, Elena Espinosa, addressed Parliament’s Environment Committee setting out the Presidency’s priorities. She stated that the Presidency would seek to prioritise work on this dossier and noted that, although she was aware of the opposition from large Member States including the UK, France and Germany, Spain had always supported the measure. She stated that it was crucial to matters including water management and fighting natural disasters like floods. On 29 January 2010 the Presidency proposed a revised compromise on the Directive. This was, however, once again blocked in Council on 4 February 2010. The UK and Germany maintained that the EU is not competent to regulate this area in the manner proposed, whilst France claimed that the proposal was overly complex. The Netherlands and Austria are also opposed to the Directive.

A progress report highlighting the remaining points of contention was published on 10 March 2010. On 15 March 2010, the Environment Council was still unable to reach political agreement on this dossier. Those who oppose the Directive reiterated their opposition while some ministers called for a fresh approach to taking this forward.

4. Thematic Strategy on Natural Resources

Proposal: Thematic strategy on the sustainable use of natural resources.


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37 http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=SurveySIPSCP
Background
The strategy follows a 2003 Communication and lays down a Community policy to balance the need to use resources with the need to protect the environment and such natural resources. The Commission’s objective for the strategy is “to reduce environmental impacts associated with resource use in Europe and globally in a growing economy”. For specific measures detailed in the strategy, please refer to the June 2009 update.

Progress
The strategy on the sustainable use of natural resources is closely linked to the thematic strategy on the prevention and recycling of waste, also adopted on 21 December 2005, as waste represents the last phase in the life cycle of a resource. Parliament adopted a resolution on the thematic strategy on 25 April 2007.


At the Environment Council held in Luxembourg on 21 October 2009, the Council called on the Commission to follow up on its raw materials initiative and present a progress report during the course of 2010 as well as reviewing the thematic strategy on natural resources. The focus of such a review should be on identifying concrete measures for improving the efficient use of natural resources.

Next Steps
The Commission and Member States are to set targets that are specific to individual types of natural resource and that relate to eco-efficiency, particularly in relation to those that have the worst environmental and social impacts.

5. Sustainable production and consumption, and sustainable industrial policy


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**Background**

The Commission published its Communication on the review of the SDS, which was adopted in 2001, on 13 December 2005. The strategy for 2005 – 2010 was adopted at the June 2006 European Council after receiving the endorsement of the European Parliament and Council of Ministers. The Communication sets down a number of “key actions” to achieve the goals of sustainable development in a number of policy areas. For details, please refer to the June 2009 update. Since 2007, the progress of the SDS has been measured by a Commission report and a debate in the December Environment Council. By 2011, at the latest, the Council will decide if a comprehensive review of the SDS is required.

The action plan on sustainable industrial policy was requested by EU Heads of State and Government within the context of the SDS, with a view to bringing about sustainable consumption and production. On 16 July 2008 the Commission presented its package of measures under the action plan. Please refer to the September 2009 update for more details.

In July 2008 the Commission published the following alongside the action plan: a proposal for the extension of the Ecodesign Directive; a proposal for the revision of the Ecolabel Regulation; a proposal for the revision of the Eco-management and Audit Schemes Regulation (EMAS); and a communication on Green Public Procurement.

- **Revised Ecolabel Regulation**
  The proposal requires ecolabel criteria to be based on the environmental performance of products which will be determined on a scientific basis considering the whole life cycle of products. It sets out criteria for the development and revision of the ecolabel. The ecolabel may not be used on medicinal products, medical devices or products containing toxic substances. Regulation 66/2010 on the EU Ecolabel was published in the Official Journal on 31 January 2010.

- **Revised EMAS Regulation**
  The revised Regulation will allow organisations with sites in more than one Member State to make a single registration. It also sets out steps for first time registration and renewal of registration. It requires registered organisations to prepare an updated environmental statement at least every three years and allows SMEs, in certain circumstances to request an extension of the three year cycle to four years. The revised

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52 http://lct.jrc.ec.europa.eu/publications
Regulation must also be further revised, if appropriate, five years after it enters into force. Regulation 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation 761/2001 and Commission Decisions 2001/681 and 2006/193 was published in the Official Journal on 22 December 2009 and it entered into force on 11 January 2010.

- Ecodesign Directive
  On 18 March 2009 the Parliament and Council agreed a compromise text on the proposed revision of the Ecodesign Directive. The text extends the application of the Directive to all energy-related products. Energy related products are products that do not consume energy during use but have an indirect impact on energy consumption, for example windows and insulation material. Directive 2009/125 establishing a framework for the setting of ecodesign requirements for energy related products was published in the Official Journal on 31 October 2009.

  The Council’s Conclusions from its meeting of 21 October 2009 call on the Commission to consider extending the scope of the Ecodesign Directive to non-energy using products when the Directive is reviewed in 2012.

  A report on incentive schemes for EMAS registered organisations for the period 2004 to 2006 was published by the Commission on 1 February 2010. This found that whilst external incentives from national authorities did have a positive effect, and that all Member States applied measures providing external incentives, the complaints from the business Community show that more could be done. Since EMAS is available equally for public authorities, Member States should consider devising incentives targeted at these so that the public authorities might in turn set an example for the private sector. The incentive scheme has been significantly strengthened in the revised Regulation and the Commission hopes this will have a positive impact.

  **On 12 March 2010 the Commission published a guide to policy makers and to business on assessing the environmental impact of products, looking at impacts throughout the lifecycle of a product.**

  **Next steps**

  A proposal for a Regulation for an Environmental Technology Verification scheme was expected in the fourth quarter of 2009 but this has been postponed until 2010. This proposal will be designed to offer a method of verifying and recognising the environmental effects of new technologies. It is also expected that the Commission will publish a strategy for a more comprehensive integration of environment, including climate change and sustainable management of natural resources, in development policy.

  **On 31 March 2010 the Commission published its work programme for 2010. In it the Commission noted a future initiative for a Roadmap to Resource Efficient and Low Carbon Europe in 2020. This roadmap will set out a coherent framework of policies and actions in a variety of policy areas, required for the shift towards a resource efficient and low-carbon economy. The Commission also aims to publish a Communication on roadmap for a low-carbon economy by 2050.**

  **Related**

  On 13 November 2008 the Commission published a proposal for a Directive on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products. The proposal recasts directive 92/75 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances and repeals directive 79/530. It extends the scope, which is currently restricted to...
household appliances, so as to allow for the labelling of all energy-related products, which might include products used in the household, commercial and industrial sectors and non-energy using products such as windows which have a significant potential to save energy once in use or installed. The Parliament adopted the proposal at first reading on 5 May 2009. On 18 November 2009 the Parliament and Council reached informal agreement on the proposal following a dialogue with the Commission.

**The entry into force of the Lisbon Treaty has necessitated some changes to the legal basis of this proposal. These concern in particular procedures relating to comitology (the process of adopting delegated legislation). A Communication from the Commission to this effect was published on 12 April 2010. The Council then adopted a position at first reading on 13 April 2010. Parliament is expected to approve the Council’s position at its sitting on 19 May 2010.**

6. Thematic strategy on pesticides

**Proposal:** Thematic strategy on the sustainable use of pesticides and parallel proposed Directive.


**Background**

In its Communication of 12 July 2006, the Commission sets out its strategy on the sustainable use of pesticides. The principle objectives are: reducing the dangers and risks linked to the use of pesticides; enhancing controls on their use and distribution; promoting substitution of the most dangerous substances with safer alternatives; encouraging the emergence of farming methods using limited quantities or no pesticides; and promoting the application of codes of good practice.

Alongside the strategy, the Commission proposes a framework Directive, by which, among other things, Member States will be required to draw up national action plans setting out individual targets for reducing dangers, risks and dependency regarding a chemicals-based approach to plant health. The Commission proposes setting up an EU-wide information exchange system in the form of an expert’s group on the thematic strategy, bringing together Member States and stakeholders to draw up guidelines, codes of good practice and recommendations.

**Progress**

Regulation 1107/2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117 and 91/414 was published in the Official Journal on 24 November 2009 and will apply from 14 June 2011. Directive 2009/128 establishing a framework for Community action to achieve a sustainable use of pesticides was also published

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in the Official Journal on 24 November 2009. Member States have until 14 December 2011 to transpose the Directive into national legislation.

7. Biocidal products

Proposal: Proposed Regulation concerning placing on the market and use of biocidal products.


Background
On 12 June 2009, the Commission published a proposal for a Regulation concerning the placing on the market and use of biocidal products. The proposed Regulation will repeal and replace existing Directive 98/8 concerning the placing of biocidal products on the market. The proposal aims to phase out the most hazardous substances (in particular those which cause cancer or fertility problems), introduce new rules for articles treated with biocides and simplify legislation while providing incentives for companies to develop safer products. For further details, please refer to the October 2009 update. The proposal was accompanied by an Impact Assessment which confirmed the need to modify the existing Directive 98/8.

Progress
Directive 98/8 is not yet applied fully as it contained a transitional period which ran until 14 May 2010 during which national rules continued to govern the placing of biocidal products on the market. Directive 2009/107 amending Directive 98/8 concerning the placing of biocidal products on the market as regards the extension of certain time periods was published in the Official Journal on 6 October 2009 and extends the transitional period until 14 May 2014. It must be implemented by 14 May 2010. The proposed Regulation has been discussed in Council working parties on 14 and 15 September as well as on 12, 15 and 26 October 2009.

On 4 December 2009 the Presidency published a background paper ahead of the Environment Council meeting of 22 December 2009, for details of which please refer to the January 2010 update. At the Council meeting there was almost unanimous support for the principle of centralised authorisation for products, though it was noted that the current national authorisation procedures should also be maintained. Views varied significantly as to the scope of application of such a procedure. There was support for the introduction of exclusion criteria and Ministers agreed with the Commission that environmental hazards should be added to the exclusion criteria. As regards treated articles and materials, Ministers expressed broad support but noted

that the approach should be both practical and proportionate especially as regards labelling. A compilation of Member State contributions to the public policy debate on the proposed Regulation was published on 21 December 2009.

On 25 January 2010 the General Affairs Council decided not to oppose the adoption by the Commission of a regulation concerning the placing of biocidal products on the market. Once adopted the regulation will provide for an extension of the current derogation from the prohibition of biocidal products containing actives substances not listed in Annex II of Regulation 1451/2007 or in Annex I or IA to Directive 98/8 until 14 May 2014, when a review of existing active substances expires.

On 18 February 2010 Christa Klaß, rapporteur in Parliament’s Environment Committee published her draft report on the proposal, which detailed her proposed amendments. A vote on the text and the amendments subsequently tabled by other MEPs on the Committee is scheduled to take place early in June.

Next steps
Work on the proposed Regulation will continue in Parliament and Council. The Commission hopes the Regulation will enter into force on 1 January 2013.

8. EU Energy Policy

Proposal: An Energy Policy for Europe


Background
The Commission presented its energy package on 10 January 2007 which contains a number of initiatives that it wanted the European Council to adopt in March. Further details of these are given in the July 2007 update.

Progress
The package was the subject of discussion at a special Energy Council on 15 February 2007 at which lengthy Council conclusions were adopted and were subsequently supported by the European Council on 8-9 March 2007, which also endorsed its own conclusions emphasising: security of supply; competitiveness, availability and affordability; and environmental sustainability. The Commission published its communication on the Second Strategic Energy
Review on 13 November 2008 and proposed a wide-ranging energy package which will give a new boost to energy security in Europe. For details please refer to the September 2009 update.


Next steps

On 1 March 2010 Commissioner Šemeta, the new European commissioner for taxation, stated his intention to finalise the revision of the Energy Taxation Directive. A spokesperson for Šemeta stated that he intends to propose a minimum rate of tax on carbon across the whole European Union. The Commission work programme notes its intention to work to revise the Energy Taxation Directive with an aim to further the Europe 2020 strategy on climate change and to complement the European Emissions Trading System and tax energy products based on their energy content and CO2 performance.

The Commission work programme also lists a series of energy-related measures that could be taken in 2010 and beyond. These include:

- A Communication on revised energy efficiency action plan to identify potential energy savings of 20% by 2020 and review the first action plan.
- An energy action plan 2011-2020 providing an overall strategy.
- A roadmap for a low-carbon energy system by 2050.
- A proposal on the transparency and integrity of wholesale market trading, with market conduct rules, a regulatory framework for monitoring and market surveillance, possibly covering electricity, gas and carbon markets.

9. Climate change

Proposal: Communication on limiting global climate change to 2°C Celsius: the way ahead for 2020 and beyond


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COP 15

Adaptation

Background
The Council adopted conclusions on climate change on 23 October 2006 reaffirming that the overall global surface temperature increase should not exceed 2 degrees centigrade, in line with the United Nations Framework Convention on Climate Change. The need to finalise the five-year programme of work on 'Impacts and Adaptation to Climate Change’ to enable early

implementation of agreed activities, was underlined. This Communication published on 10 January 2007 was part of the Commission’s energy package of initiatives (above) and sets out a number of proposals for the reduction of greenhouse gas emissions by 2020.

On 23 January 2008 the Commission launched a comprehensive set of measures aimed at tackling climate change. The central piece of proposed legislation is a directive that will strengthen and expand the EU’s ETS (see section below). Generally, the proposal is for the industry sectors covered by the scheme, by 2020, to have reduced carbon emissions by 21 per cent compared to 2005 levels. The topic has been considered a number of times by the Environment Council and the European Council. One of the key themes of the 11 and 12 December 2008 European Council was the climate and energy package. For further details, please refer to September 2009 update.

Progress

On 1 April 2009 the Commission issued its White Paper on adapting to climate change. The Commission hopes to review key policies by 2012 in order to put in place a comprehensive adaptation strategy for 2013. For further details on the White Paper, please refer to the June 2009 update. On 11 December 2009 the European Parliament Environment Committee’s rapporteur for the White Paper, Vittorio Prodi MEP (Italy, Alliance of Socialists and Democrats), issued his draft report. The rapporteur observed that the White Paper is a broad policy document and his draft therefore sought to outline a general strategic approach on increasing the resilience of the EU to the impacts of climate change. The focus, according to the draft, should be on good communication, with particular emphasis on increasing the volume and quality of data available, and good governance, which would allow real policy-effectiveness. The rapporteur supports the Commission’s proposed creation of an impact and adaptation steering group but calls on the Commission to ensure that this group includes representatives of the Parliament as observers. Parliament voted on this resolution on 6 May 2010.

The EU-US summit of 3 November 2009 and the COP15 Summit of 7-18 December 2009 continued to recognise the goals of reducing global emissions by 50% by 2050 and not allowing temperatures to increase by more than 2 degrees celsius (the non-binding but immediately effective “Copenhagen Accord”, a review of which is to take place in 2015) respectively. The Environment Council of 22 December 2009 recognised these as important first steps.

Connie Hedegaard, the new Climate Action Commissioner, had her hearing before the Parliament's Environment Committee on 12 January 2010. Ms Hedegaard emphasised that more work was needed to enforce the legislation already in place. She noted that the EU already has legislation on energy efficiency and emission reductions but that they needed to be implemented. She also stated that there needed to be more coordination between environmental priorities and budgetary priorities. Answering concerns that splitting responsibility for climate action from the main environment portfolio, Ms Hedegaard stated that having two environmental voices in the College of Commissioners would only add to the importance of environmental issues. This echoed comments made two days earlier by the now Environment Commissioner Janez Potočnik in his hearing.

At the informal meeting of EU Environment Ministers on 17 January 2010, the Spanish Presidency reiterated the EU was looking at raising its carbon emissions reduction pledge to 30%. Outgoing-Environment Commissioner Stavros Dimas stated that efforts would continue to be made to reach a global agreement in the UN. On 28 January 2010 the Member States agreed that the EU would endorse the Copenhagen Accord but that it would continue to push for the agreement of a legally binding treaty committing signatories to limit the increase in global average temperature to below 2°C above pre-industrial levels from 2012 onwards. The EU also reiterated its conditional offer of a 30% reduction in greenhouse gas emissions, if other developed countries commit to comparable emissions reductions and developing countries
contribute adequately according to their responsibilities and capabilities. In the meantime the 20% cut compared to 1990 levels set out in EU legislation will be maintained.

The Parliament adopted a non-legislative resolution on 10 February 2010 expressing its regret at the outcome of the Copenhagen summit. The Parliament observes, however, that this international failure should not prevent the EU from taking further steps towards its existing 20% target and emphasises its desire to see this commitment raised to 30%. The Parliament emphasises its conviction that the EU should immediately enter into negotiations with the US to ensure that the carbon market emerging there is compatible with the EU’s. The Parliament also states that the EU’s contribution to developing countries' efforts to mitigate the effects of, and combat, climate change should not be less than €30 billion per annum by 2020. The resolution states that the fight against climate change must focus on more than a reduction in carbon dioxide emissions and should also include the sustainable use of natural resources.

The follow up to Copenhagen has resulted in the adoption of Council conclusions on the financing of policies to deal with climate change on 16 March 2010. These were transmitted to the March European Council. A Commission strategy to re-invigorate action on climate change after Copenhagen was published on 9 March 2010 and various Council conclusions on climate change were adopted on 15 and 25/26 March 2010. These documents discuss the Copenhagen accord in relation to funding of climate change and reaffirm the EU’s commitment to a global and comprehensive legal agreement on climate change. In its conclusions of 15 March the Council requested that the Commission present a study of the comparability of greenhouse gas emission reductions offered by third countries as well as an impact assessment of the EU’s conditional move to a 30% emissions cut.

Next steps

The Commission work programme lists a number of measures that could be forthcoming this year and beyond. These include:

- A Communication on “mainstreaming climate adaptation and mitigation in EU policies and climate proofing of financial instruments”. This will touch on a number of EU policy areas, such as agriculture, transport and energy, as well as industry and services.
- Possible specific proposals to follow up on the previous item.
- A Communication on the policies needed to achieve the 30% reduction in emissions, including an assessment of energy-intensive industries.

Commission Hedegaard is expected to present a Communication on 26 May 2010 that will outline how the EU could, by 2020, increase to 30% the existing target to reduce greenhouse-gas emissions by 20%. This will include suggestions for a carbon tax, measures against carbon leakage and to remove over one billion allowances from the emission trading system by 2020 to increase incentives and increase the price of carbon. The Environment Council is set to meet on 11 June 2010 and will undoubtedly discuss this Communication as well as forthcoming international negotiations on this.

10. Halting the loss of biodiversity by 2010

Proposal: Communication on halting the loss of biodiversity by 2010.

Current Status: Commission published Communication setting out biodiversity action plan on 15 May 2006.\textsuperscript{112} Council conclusions adopted 18 December 2006.\textsuperscript{113}

\textsuperscript{112}http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0216en01.pdf


\textit{Background}

On 15 May 2006 the Commission adopted a Communication setting out a policy approach to halting the loss of biodiversity by 2010. The Commission sees the halt of biodiversity loss as its biggest environmental challenge after climate change and it outlines the extent of the problem and reviews the adequacy of the EU response so far. The Commission highlights two particular threats to EU biodiversity: ill-considered land use and development; and the increasing impact of climate change on biodiversity. The Communication identifies key areas for action and related objectives. Annex I sets out specific targets and action points to meet the ten objectives outlined in the Communication.\textsuperscript{131} For details, please refer to the June 2009 update.

\textit{Progress}

On 25 June 2009, the Environment Council adopted the conclusions welcoming the Commission’s mid-term assessment but expressed deep concern at the Commission’s assessment that the EU is unlikely to meet its 2010 target of halting biodiversity decline. A conference entitled “Visions for biodiversity beyond 2010 – People, Ecosystem Services and the Climate Crisis” took place in Stockholm from 7 to 9 September 2009. Please refer to the

\textsuperscript{115} http://ec.europa.eu/environment/nature/call_evidence.htm
\textsuperscript{122} http://www.teebweb.org/ForPolicymakers/tabid/1019/language/fr-FR/Default.aspx
\textsuperscript{123} http://ec.europa.eu/environment/nature/biodiversity/economics/pdf/d1_summary.pdf
\textsuperscript{125} http://ec.europa.eu/environment/consultations/forests_en.htm
\textsuperscript{128} http://www.weareallinthistogether.eu/

On 13 July 2009 the Commission submitted its report on the Conservation Status of Habitat Types and Species, as required under Article 17 of Council Directive 92/43 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). The report is the first ever composite review of the habitats protected by the Habitats Directive. The data covers the period from 2001 to 2006 and the Commission states that most of the protected habitats are not being adequately conserved as well as concluding that many Member States are not investing sufficiently in this area.

Speaking at the launch of the report on the Economics of Ecosystems and Biodiversity (TEEB Report) on 13 November 2009, Environment Commissioner Dimas emphasised four key messages from the 300 page report. First that mere recognition of the importance of biodiversity as the world’s natural ‘capital’ is not enough, there must be an assessment of its role and value. Secondly, the Commissioner highlighted the lack of information and knowledge, which is necessary for good policy making. Thirdly, the connection between investing in biodiversity and the fight against climate change was highlighted. Finally, the Commissioner observed that biodiversity is not equally shared across the world and that it is often the poorest countries which depend on it most. Investment in this field is therefore vital if the Millennium Goals are to be met. The Commissioner stressed the importance of the Copenhagen Summit and of the creation of an Intergovernmental Panel on Biodiversity and Ecosystems.

The Environment Council met on 22 December 2009 and adopted conclusions on biodiversity. The Council noted its alarm at the increasing rate of the loss of biodiversity as well as its disappointment that the target of halting the loss of biodiversity by 2010 will not be met. It stressed the need to revitalise efforts and political will in this area. It welcomed the TEEB Report but acknowledged that an ambitious post-2010 vision will only be achievable and realistic if global financing for biodiversity can be improved. The Council stressed the importance of convening a third and final intergovernmental and multi-stakeholder meeting as soon as possible in 2010.

The Commission published a Communication entitled “Options for an EU vision and target for biodiversity beyond 2010” on 19 January 2010. The Communication lays the groundwork for an EU vision up to 2050 and sets out four different options for a target for biodiversity to be achieved by 2020. With regard to the longer term, the Communication states that the “vision should include a clear time-frame (up to 2050), reflect the urgency of the biodiversity crisis and the intrinsic and tangible values of biodiversity and the importance of the services it provides.” In the run up to 2020 the Commission says that there are four possibilities increasing in ambition. The least ambitious is to significantly reduce the rate of loss of biodiversity and ecosystem services in the EU by 2020. At the other end of the scale the Commission says the EU could aim to halt the loss of biodiversity and ecosystem services in the EU by 2020 and restore them insofar as possible, and step up the EU's contribution to averting global biodiversity loss. The most ambitious target would require the EU not only to alter its internal behaviour but also work to reduce the harmful effects of its consumption pattern beyond its borders. Whichever is pursued a scientific baseline against which efforts can be measured must be established and research must be stepped up to fill knowledge gaps. The Communication is intended to present a number of options under consideration and may form the basis for a revised EU biodiversity strategy, which is expected before the end of 2010. The Commission notes that it is planning further stakeholder consultations. The Commission presented its Communication to the Council Working Party on the Environment on 2 February 2010.

In its conclusions of 16 March 2010 the Council noted that they agreed on a long-term
vision that by 2050 EU biodiversity and the ecosystem are appropriately protected. They also agreed interim measures for the years up to 2020 on halting the loss of biodiversity and the degradation of ecosystem services in the EU.

The Commission published a Eurobarometer survey which showed that many Europeans did not feel well informed about biodiversity loss. The Commission therefore launched a campaign to inform people in the EU about the loss of biodiversity. The campaign is called ‘We are all in it together’.

A Green Paper on forest protection and information in the EU: preparing forests for climate change, was published by the Commission on 1 March 2010. A public consultation on it will run until 31 July 2010.

11. Development of low-carbon technologies

Proposal: Communication on investing in the development of low-carbon technologies.


Background

On 7 October 2009 the Commission adopted a Communication setting out what it views as necessary in the technology field to achieve the EU’s goal of developing a low-carbon economy. This is designed to complement the other strands of Community policy including the drive for a global climate change agreement and the achievement of a carbon price though the ETS. The Commission proposes a European Strategic Energy Plan (the “SET-Plan”) which is designed to accelerate initiatives already occurring in the market. To implement the SET-Plan the Commission has drawn up Technology Roadmaps for the period 2010 to 2020 which prioritise different technologies’ needs according to their relative stages of development.

The Communication highlights seven ‘European Industrial Initiatives’ (EIIs) focusing on the development of low-carbon technologies: the European wind initiative; the solar Europe initiative; the European electricity grid initiative; the sustainable bio-energy Europe initiative; the European CO2 capture and storage initiative; the sustainable nuclear fission initiative; and fuel cells and hydrogen.
The Commission called on the Council and Parliament to support its Technology Roadmaps and the introduction of its European Industrial Initiatives in 2010 as well as re-focusing existing Community programmes to support the SET-Plan. The Communication also invites the Council and Parliament to call on Member States to increase national funding and support for low-carbon technologies. For details of the speeches of Commissioners Janez Potočnik and Andris Piebalgs to the SET-Plan conference held in Stockholm on 21 and 22 October 2009 please refer to the October 2009 update.

On 7 December 2009 the Transport, Telecommunications and Energy (TTE) Council adopted conclusions supporting the Commission's Communication. Subject to the clarification of financing issues, the Council endorsed the call for increased research efforts and to concentrate resources on projects with the highest added value.

*Council conclusions adopted at the TTE Council held on 12 March 2010 stressed the need to move from the Technology Roadmaps to the operational implementation of the EIs quickly as possible and noted that all EIs should be launched by 2011.*

### IV. PROPOSALS IN THE PIPELINE

#### 1. Implementation and enforcement of EC environmental law

**Proposal:** Communication on the implementation and enforcement of EC environmental law

**Current Status:** Communication on the review of Recommendation 2001/331 providing for minimum criteria for environmental inspections in the Member States 14 November 2007.\(^{142}\) Report on the implementation of Recommendation 2001/331.\(^{143}\) Results of Review of the Recommendation on minimum criteria for environmental inspections late 2008.\(^{144}\) *ENVI exchange of views with Commissioner Potočnik 7 April 2010.*

This Communication on implementation and enforcement will seek to discuss the various approaches that can be pursued to ensure better application of EC environmental legislation by Member States. The 2001 Recommendation contains non-binding rules on how to organise, plan, carry out and follow up on environmental inspections. In its report on the implementation of the Recommendation, the Commission found that the Recommendation had not been implemented fully by Member States. A Commission consultation on reviewing the EU Recommendation on environmental inspections and on whether further measures should be proposed as part of the review, has now ended and the results are available from the Commission.

In his hearing before Parliament's Environment Committee on 13 January 2010, the now Environment Commissioner Janez Potočnik, stressed his commitment to enforcing environmental legislation. He cited several sectors, including water, where there are numerous pieces of legislation which simply are not enforced. He stated that this would be one of his top priorities but declined an invitation from one MEP to agree a moratorium on new legislation until existing measures are implemented. *Commissioner Janez Potočnik reiterated these commitments in an exchange of views with the European Parliament Committee on Environment, Public Health and Food Safety on 7 April 2010.*

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2. Urban Transport


Following on from issues raised in the Commission White Paper on European Transport Policy, this will set out to develop a Community policy towards urban transport, as an integrated part of more general Community transport policy.

A Green Paper was published on 25 September 2007. It focuses on the benefits to be gained from a European policy on urban transport. It also proposes actions for the EU and lists a series of questions for future consultation. This may lead to legislative proposals that aim to tackle congestion, pollution, the effects of urban transport on health and the environment, such as restrictions on high-polluting vehicles, road charging, harmonised speed limits or prioritisation of public transport. A launch conference with major stakeholders took place 31 January 2007 and an online public consultation which ended on 30 April 2007, were both used to help shape the Green Paper. The Action Plan itself was published on 30 September 2009. The Action Plan covers a broad range of topics on urban mobility but of particular interest in the environment sector is the third theme “Greening urban transport”. For further details, please refer to the October 2009 update.

On 13 January 2010 a paper was published by the European Retail Forum in cooperation with the Commission which looks at ways of greening retail distribution networks. Policy makers are encouraged to pursue harmonisation among Member States in an effort to create a holistic approach which recognises the need to combine efficiency and sustainability. The paper also calls for the promotion of the cooperation between modes of transport, in particular between rail and roads. Green public procurement is also urged to create investment in more fuel efficient vehicles.

V. TO BE IMPLEMENTED

1. Carbon capture and storage


Current Status: Published in OJ L 140/114 of 5 June 2009.\textsuperscript{151} Implementation deadline 25 June 2011.

\textsuperscript{145} http://ec.europa.eu/transport/clean/green_paper_urban_transport/public_consultation_en.htm
\textsuperscript{150} http://ec.europa.eu/environment/industry/retail/pdf/issue_paper_optimisation.pdf
Background

The Directive establishes a legal framework for the environmentally safe geological storage of carbon dioxide (CO2) to contribute to the fight against climate change. It covers matters such as site selection and exploration permits, as well as which authorities should be responsible at a national level for overseeing implementation of the Directive. The Directive includes measures covering the operation and closure of sites, as well as provisions to deal with the possibility of leakages and other problems with carbon storage sites. The Council also agreed to release a budget equivalent to €300 million tonnes of CO2 (at a price of €30/t of CO2, that would come to €9 billion), so that nine or ten demonstration carbon capture and storage projects can be launched by 2015 to test this technology.

2. Thematic Strategy on the prevention of and recycling of waste


Background


On 20 November 2009 the Commission published a report on the implementation of Community waste legislation (accompanied by a Commission working document), which was complemented by separate reports on the Waste Shipment Regulation and the End of Life Vehicles Directive. The report looks at seven different Directives and finds that Community legislation has been reasonably well transposed (though often with significant delays) but states that the absence of adequate enforcement has marred its effectiveness and therefore hindered the environmental protection objectives which were the target of the legislation.

The Commission observes that the high numbers of infringement proceedings brought against Member States in respect of the Waste Framework Directive, the Landfill Directive, and the

161 http://ec.europa.eu/environment/waste/compost/developments.htm
Waste Shipment Regulation shows there have been critical failings in their implementation. Especially with regard to the Landfill Directive, the Commission calls on Member States to increase their efforts to reduce the implementation gap. Particular problems were found to exist in the Member States which joined in 2004, where over 90% of waste is still disposed of in landfill sites. The Commission highlights creating separate collection systems for different waste streams, education of citizens, investments in pre-treatment of waste before its final disposal as responses to these problems.

On 3 December 2009 the Commission launched a consultation on environmental and social impacts of the use of the sewage sludge on land. The consultation closed on 12 January 2010. The consultation is part of an assessment by the Commission as to whether the Sewage Sludge Directive (86/278) ought to be revised. An impact assessment is planned for the end of 2010.

On 1 February 2010 the Commission published an external study prepared for it which recommended the establishment of a waste implementation agency. It estimates that this could contribute to a reduction in greenhouse gas emissions and lead to annual savings of over €2.5 billion. The study finds that various gaps in the enforcement and implementation of EU environmental legislation have led to wide-scale illegal dumping across the EU. The Commission will now examine the study in detail and may propose further steps.

The Commission published a Communication on future steps in bio-waste management (e.g. food and garden waste) on 18 May 2010. This document presents the conclusions of the Commission’s analysis of the subject and sets down recommendations on how best to carry out bio-waste management. It also sets down possible actions to be taken at EU or Member State level and notes a considerable divergence between Member States. The Communication notes the financial benefits proper management of bio-waste could bring as well as the reductions in greenhouse gas emissions. It details various initiatives that could be taken at EU level, such as to improve the prevention and treatment of bio-waste (such as agreeing further targets) and to regulate materials such as compost and digestate. Better implementation of existing rules is also highlighted as important. As well as being told to apply properly the waste hierarchy to bio-waste management planning, Member States are recommended to aim for zero land-filling of untreated bio-waste and consider the potential for energy production from such waste. The European Parliament’s Environment Committee is expected to adopt a report on the subject of bio-waste management and the 2008 Green Paper on 2 June 2010.

3. Surface water pollution


**Background**
This Directive increases protection for surface water, by setting limits on concentrations in surface waters of forty-one types of pesticides, heavy metals and other dangerous chemical substances that pose a particular risk to animal and plant life and to human health. See previous updates for further information.

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Related Issues
The Commission was expected to bring a proposal to revise the Drinking Water Directive during the fourth quarter of 2009. This has been delayed, however, and is now expected at the end of the second quarter of 2010. A revision of the Water Framework Directive is also expected to be considered over the coming year, as the deadline to present possible revisions is January 2011. The Commission is also considering whether to bring forward a proposal for a Directive on the water efficiency of building.

4. Environmental Crime


Background
This Directive harmonises provisions relating to serious environmental crimes i.e. what forms of conduct will constitute a criminal offence in each Member State and the types of penalty that will have to be available. A detailed note is available from the Brussels office on the background to this Directive.

Related Issues
A Directive amending Directive 2005/35 on ship-source pollution and on the introduction of penalties for infringements was published in the Official Journal on 27 October 2009 and Member States have until 16 November 2010 to transpose it into national law. The Directive imposes criminal liability for illicit ship-source pollution where the discharge of such pollutants has been committed with intent, recklessly or with serious negligence and it causes a deterioration in the quality of water. Less serious cases of ship-source pollution will not be criminal offences. The Directive broadens the definition of ‘legal person’ to reduce the number of exceptions under the amended Directive. The penalties are left to the discretion of the Member States when it comes to implementation, subject to the proviso that they must be effective, proportionate and dissuasive.

5. Flood risk management


As at the implementation deadline of 26 November 2009, only Germany, Latvia and Lithuania had fully complied with the requirement to notify the Commission of the measures taken to implement the Directive 2007/60. Luxembourg and the UK had partially complied. The remaining 22 Member States had made no notifications to the Commission.

166 http://ec.europa.eu/environment/water/flood_risk/timetable.htm
6. Air Quality and Cleaner Air


During the course of 2009 the Commission has adopted 20 decisions regarding applications from 18 Member States for extensions of time for complying with air quality legislation. The majority of these applications have been rejected by the Commission.

7. Marine environment


VI. IN FORCE

1. The Århus Convention


Background
On 25 June 1998, the UN Economic Commission for Europe (UNECE) adopted the Århus Convention in the Danish city of Århus. The Århus Convention is designed to raise public awareness of environmental concerns by promoting access to information and participation in the decision-making process and consists of three pillars, each of which grants different rights to citizens. The first pillar gives the public a right of access to environmental information; the second one gives the public the right to participate in decision-making processes and the third one ensures access to justice on environmental matters.

Progress
The EC has brought its legislation into line with, and ratified, the Århus Convention. A proposal for a Directive on access to justice remains the only piece of legislation still to be adopted, as it is blocked in Council. See February 2009 update for further information.

On 16 and 17 April 2009 a conference was held to discuss the implementation of the Århus Convention. The Presidency prepared a note on the conference, which was discussed at the Environment Council on 25 June 2009. For further information please refer to the October 2009 update.

2. Emissions Trading Scheme


Report on progress towards Kyoto Protocol targets 12 November 2009.\textsuperscript{189} Revision of security procedures relating to transactions carried out under ETS\textsuperscript{190} Commission publishes emissions data for 2009 on 6 April 2010.\textsuperscript{191}

Related:

- Directive 2008/101 amending Directive 2003/87 so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community published OJ L8/3, 13 January 2009.\textsuperscript{192}
- Consultation on future auctioning of emission allowances under the Emissions Trading Scheme closed 4 August 2009.\textsuperscript{194} US airlines launch legal challenge to their inclusion December 2009. Referred to Court of Justice 20 January 2010.

Background

The Emissions Trading Scheme (ETS) is intended to help the EU meet its Kyoto targets. It allows companies to buy and sell emission allowances and came into effect in January 2005. National Allocation Plans (NAPs) under the Directive on Emissions Trading were due for submission to the Commission by March 2004. In the NAPs, Member States must determine or allocate how much CO$_2$ companies may emit, and the Commission must approve those plans. The Commission announced on 25 October 2007 that it will cut 10 per cent off the limits for the second phase of the ETS, running from 2008 to 2012.

Progress

The Directive amending the ETS Directive so as to improve and extend the greenhouse gas emission allowance trading scheme was published in the Official Journal on 5 June 2009. This is to be implemented by 31 December 2010. The Directive reinforces the existing trading scheme and expands it to cover a number of greenhouse gases that were not covered by the original scheme. It also covers a wider category of companies than before. The two most significant changes are the establishment of a ceiling for quotas at EU level, rather than national level, and the allocation of emission quotas through auction sales. For further details please refer to the October 2009 update.

On 23 September 2009 the Court of First Instance (CFI) delivered its judgments in Poland v Commission (T-183/07) and Estonia v Commission (T-263/07). The CFI found that the decisions by the Commission regarding the Polish and Estonian NAPs for the period 2008 to 2012 were improperly adopted and that the Commission’s power of review of NAPs is very limited. For further details please refer to the October 2009 Environment update and the September 2009 update on developments from the European Court of Justice. On 11 December 2009 the Commission adopted revised decisions relating to the Polish\textsuperscript{195} and

\textsuperscript{188} http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&numaff=C-505/09
\textsuperscript{190} http://www.europolitics.info/pdf/Europolitics_en/eure3922.pdf
\textsuperscript{191} http://ec.europa.eu/environment/climat/emission/pdf/2008_09allocation.xls
\textsuperscript{194} https://quickplace.icfconsulting.com/QuickPlace/eu-ets-auctions-consultation/Main.nsf/h_Index/0A2991E04661B168852575C800581993/$FILE/Copy.pdf?openelement
\textsuperscript{195} http://ec.europa.eu/environment/climat/emission/pdf/pl_decision_en.pdf
Estonian NAPs. The Commission has also lodged appeals against the rulings. **On 19 April 2010 the Commission announced that it had accepted a revised NAP submitted by Poland for 2008 – 2012.**

On 4 June 2009 ICF International (consultants working for the Commission) launched a consultation on future auctioning of emission allowances under the ETS. In accordance with the revision of the ETS Directive the Commission has to adopt a Regulation by 30 June 2010 to ensure that auctioning is conducted in an open, transparent, harmonised and non-discriminatory manner. For details of the consultation, please refer to the June 2009 update. A discussion of the consultation document with stakeholders took place on 24 June 2009. The consultation closed on 3 August 2009.

The Commission published a report on the EU's progress towards meeting its targets under the Kyoto Protocol on 12 November 2009. Of the EU-15, which agreed to reduce its greenhouse gas emissions by 8% by 2008-2012 compared to base year levels, only one Member State (Austria) is currently projected to have difficulties meeting its reduction commitment. However, all the data is based on projections calculated using 2007 data which do not take account of the economic downturn and may therefore be overestimated. Of the twelve Member States that joined the EU in 2004 and 2007, nine of them that have Kyoto targets are projected to meet their commitments. The report sets out where further reductions will be sought in the period 2013 to 2020 to achieve the EU's target of reducing greenhouse gas emissions by 20% compared to 1990 levels by 2020.

On 18 February representatives of EU Member States approved a revision of security procedures relating to transactions carried out under ETS, in particular the security of registries. These measures should allow market operators direct connection to the online transaction platform in the EU market. National authorities will also gain greater monitoring powers by being able to open new accounts but also suspend and close accounts. Rules for sharing and rules for national enforcement bodies are also set out in an attempt to halt any 'phishing' of information on the internet, which previously caused 13 European countries carbon registries being shut down.

**Related issues**

The Directive extending the ETS to the aviation sector was published in the Official Journal on 13 January 2009. This is to be implemented by 2 February 2010. Please refer to the September 2009 update for further details. Commission Regulation 748/2009 adopted on 5 August 2009 and published in the Official Journal on 22 August 2009 lists approximately 4,000 airlines which are to be included in the ETS. Member States are specified as responsible for each airline according to operating licences and, in the case of non-EU airlines, according to traffic in Member States. The Regulation entered into force on 25 August 2009.

In mid-December 2009 American Airlines, Continental Airlines, and United Airlines – backed by the US Air Transport Association (ATA) launched an action for judicial review of the legality of the inclusion of non-EU airlines in the ETS scheme before the High Court of Justice of England and Wales. The UK was prescribed as the responsible Member State for the three airlines hence the challenge there. The airlines allege that their inclusion breaches the Kyoto Protocol and the EU-US Open Skies Agreement. It is understood that the matter was referred to the Court of Justice of the European Union on 20 January 2010.

### 3. Groundwater directive

**Legislation:** Directive 2006/118 on the protection of groundwater against pollution and deterioration

Current Status: Published in the OJ L372/19 of 27 December 2006.\textsuperscript{197}

4. Fluorinated greenhouse gases

Legislation: Regulation 842/2006 on certain fluorinated greenhouse gases.

Current Status: Published at OJ L 161/1 of 14 June 2006.\textsuperscript{198}

5. Bathing Water Directive


Current Status: Published at OJ L 64/37 of 4 March 2006.\textsuperscript{199} Annual bathing water report 12 June 2009.\textsuperscript{200}


Current Status: Published at OJ L 102/15 of 11 April 2006.\textsuperscript{201}

7. Environment liability

Proposal: Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage.

Current Status: Published at OJ L 143/56 of 30 April 2004.\textsuperscript{202}

8. Batteries and accumulators


Current Status: Published at OJ L 266/1 of 26 September 2006.\textsuperscript{203} Corrigendum to the Directive.\textsuperscript{204} Directive 2008/12 amending Directive 2006/66, as regards the implementing powers conferred on the Commission.\textsuperscript{205}

9. INSPIRE – Infrastructure for spatial information

Proposal: Directive 2007/2 establishing an infrastructure for spatial information in the EC (INSPIRE)

Current Status: Published at OJ L 108/1 of 14 March 2007.\textsuperscript{206}

\textsuperscript{198}http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_161/l_16120060614en00010011.pdf
\textsuperscript{199}http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_064/l_06420060304en00370051.pdf
\textsuperscript{201}http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_102/l_10220060411en00150033.pdf
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Background
A review of the application and effectiveness of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11 and Directive 2003/35 (together, the EIA Directive) has been submitted to the Commission. The study suggests how the application of the EIA Directive might be improved and also includes recommendations for amendments to the EIA Directive. A report from the Commission to the Parliament and Council, required by the EIA Directive, was published on 23 July 2009. The report confirms that the objectives of the EIA Directive have generally been achieved. The Commission does however highlight some areas where improvements are needed including in the areas of cross-border impact assessment and coordination between the Member States. Please refer to the October 2009 update for further details. In his Parliamentary hearing prior to being confirmed, Commissioner Potočnik stated that the EIA is now over 25 years old and in need of revision to address changes in the economies of the EU. He noted that the review process had already begun and that it would certainly involve stakeholder consultation. He did not give any indication of the timeline for this work however.

The Commission has received a study on the effectiveness of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA Directive). The Commission adopted a report on the SEA Directive on 14 September 2009, which shows that the Directive’s application is varied and still in its infancy. The Commission highlights certain opportunities for improving the functioning of the Directive including helping Member States to develop the requisite capacity for the uniform implementation and application of the Directive. The report notes that a number of Member States require further guidance on the interpretation of key concepts such as screening criteria as well as the link between the SEA Directive and the EIA Directive. The Commission notes that it might also be possible to develop guidance on how to give more consideration to climate change and halting the loss of biodiversity within the framework of the SEA Directive.

The EU’s Committee of the Regions published an Opinion on 15 April 2010 outlining its views on improving the EIA and SEA Directives.