THE STELLAR RIGHTS

An EU level study

Justice and Environment 2024

CONTENTS

1. Introduction

The EU Charter of Fundamental Rights (the Charter) is a modern bill of rights, part of the EU's primary legislation[1], Its main contribution is that it brings forth the relevance of human rights in the context of law and policy making[2]. According to Art. 51(1) of the Charter, the provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. The project's main premise is that the EU and the Member States should respect the rights and observe the principles enshrined in the Charter when implementing the EU law, with a special focus on law and policy making in the field of climate and energy.

In the course of the project activities, we will explore the implementation of specific rights and principles of the Charter such as those provided in *Art. 37 Environmental protection, Art. 35 Health care, Art. 41 Right to good administration, Art. 42 Right of access to documents, and Art. 47 Right to an effective remedy and to a fair trial* and their relevance to the climate and energy law and policy making.

The project partners focus on the specific field of climate and energy law and policy, and within this area, to raise the awareness and readiness of the target audiences to rely on and exercise the Charter rights and to influence the EU and national climate and energy-related policies[3] and actions. In this context, we will research this area of law to uncover how these rights interact with these policy processes and to show how the interaction works. Further, we will offer assistance to the target groups so that they can use legal remedies and plan strategic litigation and other legal avenues for exercising the Charter rights.

With its focus on climate and energy law and policy, the project wants to promote and raise awareness of the Charter rights and principles with special regard to environmental protection and the protection of Union values, rule of law, good governance and transparency. The project aims to train key stakeholders to apply strategic litigation and other legal measures for the benefit of the environment, for the protection of rule of law and future generations. The CSOs, the legal professionals, the ombuds institutions empowered with new knowledge and skills will be able to contribute at national and EU level to the implementation of the Charter's rights and

[1] It has been legally binding since its entry into force of the Lisbon treaty on 1 December 2009.

[2] European Union Agency for Fundamental Rights, 2020. Handbook on applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level.

[3] We use the term "policies" to encompass all the strategic documents in the climate and energy field, incl. policies, programs, plans and any other documents of strategic character.

principles, thus contribute to striking the right balance between energy and development targets and environmental and participatory targets and thereby support the implementation of the Charter.

The project activities consist of researching EU legal instruments, collecting data on Member State level climate and energy law and policies and their alignment with the relevant rights and principles of the Charter, training the target groups (e.g. CSOs, legal practitioners), holding national events with ombudsman institutions and EU level events with the participation of EU institutions and journalists.

Awareness raising and training activities will be focused on the rights and principles stemming from the Charter and reinforced by the implementation of the Aarhus Convention rights and will increase the knowledge of the target groups of the EU law, the available remedies and their application to climate and energy policy matters (legislative, strategic and project level decision-making).

As a result, the members of the target groups will be equipped with knowledge and tools to develop a litigation strategy and communicate and advocate for the enforcement of Charter rights and the principles, to promote a high level of environmental protection with special regard to climate and energy matters.

We have formulated the key conceptual question of this study as follows. *How can we rely on the Charter rights and principles when implementing the EU law in the field of climate and energy?* We want to find out *how we can exercise our Charter rights affected by the climate and energy-related policies or, conversely, can we exercise our rights to influence the consultation, adoption, implementation, monitoring and amendment of these policies? How can the procedural rights of the Charter aided by the Aarhus Convention rights promote a high level of environmental protection on climate and energy matters?*

2. Framework explanations and guidance

Before we explain in the next chapters the role of the Charter for protection of human rights, and refer to the key legal provisions integrating environmental policy into energy and climate policy in different EU legal instruments, the soft-law framework and policies relevant for environmental human rights and access to justice, the strategic rights-based climate litigation, the avenues for protection of the Charter rights, and the case law and other references, we would like to lay the groundwork for them by turning our attention to three key guidance documents useful for interpretation and implementation of the Charter.

The first one is the *Explanations relating to the Charter of Fundamental Rights*, OJ C 303, 14 December 2007, pp. 17–37 (2007/C 303/02) (the Explanations). These explanations were

originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of **interpretation intended to clarify the provisions of the Charter**[4][5].

The second one is Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union[6]. It states that the objective of the Commission's policy is to **make the fundamental rights provided for in the Charter as effective as possible**. It also stresses that the Charter is not a text setting out abstract values, it is a**n instrument to enable people to enjoy the rights** enshrined within it when they are in a situation governed by Union law.

The third one is the *Handbook on applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level*[7] by the European Union's Agency for Fundamental Rights (the Guidance). The Guidance aims to foster better understanding of the Charter, including when it **applies in law and policymaking emphasising the relevance of human rights**.

2.1. EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

According to the paragraph 6 of the Preamble of the Charter, the Charter will be **interpreted by the courts of the Union and the Member States with due regard to the explanations** prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention. The *Explanations relating to the Charter of Fundamental Rights* provide short interpretative texts under each article of the Charter explaining the legal context and referring to the European Convention of Human Rights (ECHR), the EU law and the case law of the Court of Justice of

[4] European Union (EU) (2012), Explanations relating to the Charter of Fundamental Right. OJ C 326, 26 October 2012

[5] Here and elsewhere in the document we have emphasized some important texts in bold.

[6] COMMUNICATION FROM THE COMMISSION Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union /* COM/2010/0573 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010DC0573

[7] European Union Agency for Fundamental Rights, 2020. Handbook on applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level.

the European Union (CJEU) and European Court of Human Rights (ECtHR). See below some examples of interpretation of rights and principles important for this study.

Explanation on Article 35 — Health care

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article 168 of the Treaty on the Functioning of the European Union, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article 168(1).

Explanation on Article 37 — Environmental protection

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Article 3(3) of the Treaty on European Union and Articles 11 and 191 of the Treaty on the Functioning of the European Union. It also draws on the provisions of some national constitutions.

Explanation on Article 51 — Field of application

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council. The term 'institutions' is enshrined in the Treaties. The expression 'bodies, offices and agencies' is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles 15 or 16 of the Treaty on the Functioning of the European Union).

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they ***act in the scope of Union law*** *(judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 ERT [1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: 'In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...' (judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course, this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.*

2.2. STRATEGY FOR THE EFFECTIVE IMPLEMENTATION OF THE CHARTER OF FUNDAMENTAL RIGHTS BY THE EUROPEAN UNION

In the Strategy we read that the upholding of fundamental rights by Member States when they implement Union law is in the common interest of all the Member States because it is essential to the mutual confidence necessary for the operation of the Union. The importance of this principle is manifested in view of the expansion of the EU acquis in areas where fundamental rights are especially relevant, such as the area of freedom, security and justice, non-discrimination, Union citizenship, the information society and **the environment**[8].

The Strategy provides a "Fundamental rights Check-list" which could be of use for all who need to or want to ensure proper implementation of the Charter in the field of climate and energy - from Member State authorities, legal practitioners or civil society organisations.

1. What fundamental rights are affected?

2. Are the rights in question absolute rights (which may not be subject to limitations, examples being human dignity and the ban on torture)?

3. What is the impact of the various policy options under consideration on fundamental rights? Is the impact beneficial (promotion of fundamental rights) or negative (limitation of fundamental rights)?

4. Do the options have both a beneficial and a negative impact, depending on the fundamental rights concerned (for example, a negative impact on freedom of expression and beneficial one on intellectual property)?

5. Would any limitation of fundamental rights be formulated in a clear and predictable manner?

6. Would any limitation of fundamental rights:

- be necessary to achieve an objective of general interest or to protect the rights and freedoms of others (which)?

- be proportionate to the desired aim?

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[8] COMMUNICATION FROM THE COMMISSION Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union /* COM/2010/0573 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010DC0573

- preserve the essence of the fundamental rights concerned?

2.3. HANDBOOK ON APPLYING THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION IN LAW AND POLICYMAKING AT NATIONAL LEVEL

The Handbook provides valuable guidance on the use of the EU Charter of Fundamental Rights at national level, emphasising that, unlike the international and national human rights instruments, the "field of application" of the Charter is limited to areas falling within the scope of EU law. Further, the Handbook makes a point of advising the legal practitioners working for national parliaments and/or administrations that they play a key role under the Charter when **developing legislation and/or policies**, because they have to deliver three essential tasks.

They must establish:

• *whether or not the Charter applies in a given (legislative) proposal;*
• *what the Charter implies for the national legislature/the national administration in terms of negative and positive obligations to avoid violations of the Charter;*
• *whether there is potential in a specific instance of law and/or policymaking not only to respect the Charter but also to proactively promote it as required under Article 51 of the Charter*[9].

However, with the Stellar project, we would like to research and promote the role the CSOs, legal professionals, and ombuds institutions could play in the implementation of the Charter's rights and principles ensuring that the national authorities are properly applying the tasks above.

The **field of application** of the Charter is central to the question of its implementation. Art. 51(1) makes it clear that the provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union and to the Member States only when they are implementing Union law. The Handbook also tackles this question stating that the EU fundamental rights apply at national level only where Member States are "implementing Union law" and that "it follows unambiguously from the case-law of the Court of Justice" that this requirement covers "the Member States when they act in the scope of Union law."

The use of the Charter by the CJEU suggests that certain policy fields are especially prone to raise arguments based on the Charter. Before the CJEU, the Charter is frequently used in fields like social policy (e.g. employment and working conditions, insolvency, transfer of undertakings, parental leave); asylum and migration, consumer protection, judicial cooperation

[9] European Union Agency for Fundamental Rights, 2020. Handbook on applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level.

in civil matters (e.g. jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility); taxation (value added tax); intellectual property; agriculture; and **the environment.**[10]

Another important guiding point in the Handbook is that the Charter makes, in Article 52(5), a **distinction between "rights" and "principles" of the Charter**. These are two types of provisions within the Charter (note also the distinction between the two sources of EU fundamental rights, namely the Charter and the general principles of EU law). Both these types of Charter provisions are binding. However, the Charter rights have to be "respected" and the principles in the Charter should be "observed". Whereas the rights can be invoked by individuals directly before national courts, this is not the case for principles.[11]

The principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality. (Art.52(5) of the Charter)

Only in the interpretation of implementing acts and for the assessment of their validity against the requirements of the Charter are the principles to be "judicially recognisable," that is, only in such circumstances can a Charter principle be invoked before a national court.[12]
One of these principles is the principle in Art.37 of integration of high level of environmental protection and the improvement of the quality of the environment into the policies of the Union, incl. the climate and energy policies.

The Handbook emphasises **the duty to respect, observe and promote the Charter** based on Art.51(1) and that when the Member States implement the EU law they shall respect the rights, observe the principles and promote the application of the Charter. This duty rests on all governance authorities of the Member States, including national lawmakers, administrations and judges. The Stellar project could contribute to better understanding and exercising of this duty by the national authorities.[13]

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[10] Ibid.

[11] Ibid.

[12] Opinion of Advocate General Cruz Villalón of 18 July 2013 paras. 49 and 50 in CJEU, C-176/12, Association de médiation sociale v. Union locale des syndicats CGT and Others [GC], 15 January 2014.

[13] Ibid.

The Handbook maintains that the effect of the Charter within national law does not depend on the constitutional law of the Member States (e.g. on how it relates to international law) but follows from EU law and is therefore based on the principles of direct effect and supremacy. National courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law (as interpreted by the CJEU). National measures can be reviewed in the light of the Charter whenever they come within the scope of EU law. Where the Charter provisions are sufficiently precise and unconditional, they can have a direct effect. This implies that national norms conflicting with the Charter are rendered inapplicable. The direct effect allows individuals to invoke the Charter in proceedings before national courts. Moreover, the direct effect of the Charter can also lead to the creation of rights that are not available in national law.[14]

The Handbook provides also practical tools on applying the Charter such as a **Checklist on the applicability of the Charter** and **Charter compliance check**.

3. The role of the Charter and its linkage with human rights (including the ECHR) in litigation

Environmental protection is increasingly seen as interconnected with other human rights, such as the rights to life, health, and well-being. The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration, 1972) was the first international agreement to declare that all people have the right to live in an environment that supports health, well-being, and a quality life. It emphasises that the environment should be protected for the benefit of present and future generations. Principle 1 of the Declaration states that humans have the "fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." This principle underscores that environmental protection is not just a matter of preserving natural resources but is also essential to ensuring human rights. The United Nations Human Rights Council (UNHRC) and the United Nations General Assembly (UNGA) adopted resolutions recognising the right to a clean, healthy and sustainable environment as a human right[15]. The UN Resolution General Assembly's Resolution of 28.07.2022 recognized in its Preamble that environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present

[14] Ibid.

[15] https://digitallibrary.un.org/record/3983329/files/A_RES_76_300-EN.pdf?ln=en

and future generations to effectively enjoy **all human rights**. Although not legally binding, these Resolutions can serve as guiding frameworks for EU legislation and jurisprudence. In addition, the Council of Europe's (CoE) document "Mainstreaming the Human Right to a Safe, Clean, Healthy, and Sustainable Environment with the Reykjavik Process"[16] highlights the CoE's commitment to embedding environmental rights within its framework. This document stems from the 2023 Reykjavik Summit, where European leaders acknowledged the urgency of addressing the "triple planetary crisis" of climate change, biodiversity loss, and pollution, which threaten human rights and intergenerational equity.

The European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights are distinct legal instruments, yet they share a common foundation in values and principles. Both legal documents guarantee several overlapping rights, such as the right to life, enshrined in Article 2 of both the ECHR and the Charter, and the right to respect for private and family life, protected under Article 8 of the ECHR and Article 7 of the Charter. These shared rights are often central in human rights-based strategic climate litigation cases in Europe. In such cases, plaintiffs invoke Articles 2 and 8 of the ECHR, arguing that their governments' insufficient actions to reduce greenhouse gas emissions and combat climate change violate their rights to life and private and family life. They contend that the adverse impacts of climate change threaten their health, well-being, and living conditions, thus constituting a breach of these fundamental rights.

Article 35 of the Charter of Fundamental Rights of the European Union (the 'Charter') mandates that a high standard of human health protection must be guaranteed in the development and execution of all European Union policies and actions. Additionally, Article 37 of the Charter requires that a high level of environmental protection and enhancement of environmental quality be incorporated into EU policies, in alignment with the principle of sustainable development.

The Charter provides an explicit provision on children's rights (Article 24), covering the right to protection, care, and participation. This Article mandates that the best interests of the child be a primary consideration in all actions relating to children, whether taken by public authorities or private institutions. In addition, Article 24 provides that children have the right to express their views freely, which must be considered according to their age and maturity. This right has a potential to promote inclusive public participation in environmental decision-making, advocating

[16] Human Rights Council Res 48/L.23/Rev.1, UN Doc A/HRC/48/L.23/Rev.1, 5 October 2021; United Nations, General Assembly, 'The Human Right to a Clean, Healthy and Sustainable Environment', A/76/L.75 (2022) https://www.google.com/url?q=https://rm.coe.int/mainstreaming-the-human-right-to-a-safe-clean-healthy-and-sustainable-/1680af0866&sa=D&source=docs&ust=1730988993194408&usg=AOvVaw0Lz14MOBkpnouN_SHSmEHV

for youth involvement in environmental impact assessments, policy debates, and legal actions concerning the environment. A recent case at the CJEU, Sabo and Others v. European Parliament and Council (Case C-290/20 P)[17] relied on the damaging effects on 'the well-being of (...) children' as a ground for action. The case was found by the Court inadmissible on procedural grounds.

Beyond the substantive human rights-based provisions of the Charter, several other sections are fundamentally relevant to our project. Some of these provisions are formulated explicitly as rights. For instance, Art. 11 guarantees freedom of expression and information, while Article 41 ensures the right to good administration. Art. 42 and 43 respectively cover the right of access to documents and the European Ombudsman, and Art. 44 addresses the right to petition. These articles are crucial for ensuring access to environmental information and enabling public participation in climate and energy policy and decision-making processes. Furthermore, Art. 47 of the Charter guarantees the right to an effective remedy and to a fair trial, underscoring the importance of access to justice in climate and energy matters.

Other provisions, while not explicitly formulated as rights, still serve as a legal basis for enforcing public influence on climate and energy policy and decision-making. Art. 37, which focuses on environmental protection, is particularly significant in this context: it not only recognises environmental rights as fundamental values but also provides legal basis in advocacy and litigation efforts aimed at environmental and climate protection. It can be invoked in legal arguments to support claims that government policies or actions must consider and safeguard environmental integrity.

4. The legal framework of the EU law and the soft-law instruments relevant to the Charter rights, principles and climate and energy sector

4.1. KEY LEGAL PROVISIONS OF SELECTED EU LEGAL INSTRUMENTS FOR INTEGRATING ENVIRONMENTAL PROTECTION AND OTHER CHARTER RIGHTS AND PRINCIPLES INTO CLIMATE AND ENERGY POLICY

As stated above, the project is exploring and promoting the application of the Charter rights and principles at EU and national level within the realm of climate and energy law and policy. We will attempt to raise the awareness and readiness of the target audiences so that they could know and apply the Charter rights and principles and influence the climate and energy-related

[17] https://eubiomasscase.org/wp-content/uploads/2019/08/EU-Biomass-Case-Main-Arguments.pdf

policies defined and required by the EU law ensuring a higher level of environmental protection, rule of law, good governance and transparency.

To this end, we have drawn up a list of EU legal instruments - regulations and directives - in the climate and energy sector as well as horizontal environmental law instruments related to environmental assessments. In this table we highlight the provisions that integrate environmental protection into EU climate and energy policies and those procedural rights that could influence the consultation, adoption, implementation, monitoring and amendment of climate and energy policies. The exercise of the rights in the respective procedures could be linked to the environmental and climate aspects of the EU policies, strategies, plans and projects. The participatory rights set out by the EU environmental and climate legislation may provide that the public can influence climate and energy policy and decision-making affecting human rights.

The participatory rights embedded in various procedures under the EU legal instruments, e.g. strategic environmental assessment of the impacts of strategic documents, could bring forward the protection of the rights and principles, e.g. under the Equality, Solidarity, Citizens' rights and Justice titles of the Charter. For example, Art. 7 of the European Climate Law contains an access to information requirement that when the EC assesses the consistency of national measures and finds them inconsistent with the climate-neutrality objective or inconsistent with ensuring progress on adaptation, the EC may issue publicly available recommendations to that Member State.

We present below in the Annex, in a table format the key features of the relevant EU legal instruments eliciting their provisions integrating environmental protection, procedural provisions and a summary of their relevance to the climate and energy policies.

4.2. SOFT-LAW FRAMEWORK AND POLICIES LINKED TO ENVIRONMENTAL HUMAN RIGHTS AND ACCESS TO JUSTICE

International and European soft law instruments complement binding laws by setting standards. These documents play a crucial role in shaping policies and practices related to environmental protection and human rights. These instruments, while not legally binding, influence the development of binding laws and provide guidance on best practices. These soft law instruments also help to increase public awareness, while they affect the mindset of policy- and decision-makers, thereby influencing actual implementation of legally binding norms. Relevant soft law instruments in connection to Article 37 of the EU Charter of Fundamental Rights and environmental human rights include (non-exhaustively):

Rio Declaration on Environment and Development[18] (1992) and Agenda 21 (1992)[19], which outline environmental governance principles, such as precautionary principle, polluter pays principle, and public participation in environmental decision-making;

Sustainable Development Goals (SDGs)[20], particularly SDG 13 (Climate Action), SDG 15 (Life on Land), and SDG 16 (Access to justice for all). Its implementation is followed up through the annual **UN SDG Progress Reports** that track each country's performance on the SDGs, with data and recommendations on climate action, life on land, and justice for all;

UN Guiding Principles on Business and Human Rights[21] (2011) which provide a framework for businesses to respect human rights, including environmental rights, and for states to protect against human rights abuses by third parties.

The **European Green Deal** contains principles of environmental and climate protection as well as related rights, including access to information, public participation and access to justice; and the **European Green Deal Communication Guidance[22]** which outlines best practices for communicating Green Deal initiatives to the public, fostering engagement and transparency.

Our Common Agenda[23], a Report issued by the UN Secretary-General in 2021, calls on Member States and other stakeholders to explore concrete actions for incorporating the interests of future generations into national and global decision-making, with a view to consolidating these efforts in a Declaration on Future Generations.

The **Maastricht Principles of Human Rights of Future Generations[24]** (2023) provide a set of guidelines developed in the context of environmental and human rights law which aim to ensure that the needs and rights of future generations are considered and protected in current decision-making processes.

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18 https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

19 https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf

20 https://sdgs.un.org/goals

21 https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

22 https://commission.europa.eu/publications/communication-european-green-deal_en

23 https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf

24 https://www.rightsoffuturegenerations.org/the-principles

5. Strategic elements of rights-based climate litigation, including main legal approaches

Strategic litigation can bring about significant changes in law, court practice or public awareness through methods such as bringing test cases to court, filing amicus curiae briefs in ongoing cases, and consistently advancing arguable points in a series of similar cases over time. Bringing climate justice claims on the basis of human rights can provide an opportunity to test the actual scope of the state's justiciable obligations. A strategic litigation initiative that brings concrete cases of human suffering related to disasters and the adverse effects of climate change through media and judicial channels can focus attention on finding appropriate responses where existing instruments - even those policies and laws adopted for addressing climate change - are currently inadequate or insufficient.

Climate rights can be assessed as individual or collective rights, as substantive or procedural rights, or based on their functions, such as defending values or conditions important to individuals (life, health, property, food, water and sanitation), or defending due process or administrative procedures that could enable the enjoyment of substantive rights. In another perspective, climate rights focus on the enforcement of these rights in international, regional and national courts through climate change litigation.[25]

Litigation has become an important tool for environmental activists to put pressure on states to respond better to the challenges posed by climate change. Before 2015, there were only a handful of rights-based climate cases, but since that year, 40 cases have been filed in 22 countries, before three international bodies.[26] The human rights arguments in climate cases have been increasingly applied. Setzer and Higham estimated that 112 human rights cases have now been identified globally, including in the US, with 29 of these cases filed in 2020 and a further five up to May 2021[27].

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[25] The concept of “climate rights” assessment framework, classification and country examples, Association Justice and Environment (2024) https://justiceandenvironment.org/wp-content/uploads/2024/10/Climate-rights-study-final-2024-for-publication.pdf 29.10.2024.

[26] https://www.openglobalrights.org/climate-litigation-and-human-rights-averting-the-next-global-crisis/, see also https://climaterightsdatabase.com/ 29.10.2024.

[27] Setzer, J. and C. Higham (2021). Global Trends in Climate Change Mitigation: 2021 Snapshot. London: Grantham Research Institute on Climate Change and Environment. https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf 29.10.2024.

The UNEP identifies climate litigation cases based on two key criteria: (1) the case must generally be brought before judicial bodies and, (2) climate change law, policy, or science must be a material issue of law or fact in the case.[28]

In the framework of the existing jurisprudence on the obligations of States to respect, protect, and fulfil human rights, arguments have been developed and refined in the past two decades in the context of human rights-based environmental and climate litigation, and in this paper, we are also seeking to extend these arguments.

5.1. DIFFERENT ARGUMENTATIONS IN RIGHTS-BASED CLIMATE LITIGATION:

- Failure to adopt adequate measures to address climate change, e.g. pressuring governments to do more to mitigate climate change, for example through challenging emission reduction plans.
- Lack of enforcement of existing commitments and targets: Basis for the claim is that States cannot respect, protect and fulfil human rights while breaching legislation they have adopted.[29]
- Failure to protect human rights/constitutional rights when taking action on climate change.

Failure to adopt adequate measures to address climate change

By setting benchmarks for States' climate action, the Paris Agreement provides a useful baseline for climate litigation. Furthermore, this document explicitly recognizes the relevance of human rights to climate change, and that actions to address climate change shall comply with human rights obligations.

Useful precedent for rights-based cases is the Urgenda case where it was argued that human rights impose positive duties on national governments to adopt adequate measures, including legislations to reduce GHG emissions and to adapt to the impacts of climate change. The Dutch Supreme Court stated that the risks of climate change fell within Articles 2 (right to life) and 8 (right to private and family life) of the ECHR.[30] The Urgenda case was the first case to establish that climate inaction is a violation of human rights and to hold a government accountable for its international commitments and national targets regarding GHG emission cuts. The court

[28] United Nations Environment Programme (2023). Global Climate Litigation Report: 2023 Status Review. Nairobi, https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review. 29.10.2024.

[29] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3787963

[30] https://www.urgenda.nl/en/themas/climate-case/

referred to the 'common ground' approach developed by the ECHR. According to this approach, a State need not have ratified the entire body of applicable instruments, but it is sufficient if the instruments in question *'represent a continuous development of the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a particular area, that there is common ground in modern societies'*. This common ground approach is increasingly being referred to in climate change cases, allowing a court to draw on a 'baseline of norms' (from both hard law treaties and soft law instruments such as the Paris Agreement and IPCC reports) in relation to climate rights.[31]

Lack of enforcement of existing commitments and targets

A few cases have been brought on the basis that national governments have an obligation to enforce laws in which the State has committed to address climate change and to provide redress to those who suffer the effects of climate change. The legal basis of this argument is that States cannot respect, protect and fulfil human rights if they violate the laws they themselves have enacted.[32] In the case of *PSB et al. v. Brazil*[33] the applicants alleged that failure to implement Brazil's Action Plan for the Prevention and Control of the Legal Deforestation in the Amazon has violated the fundamental rights of indigenous peoples and future generations. This case is still pending.

In the case of *Leghari vs Federation of Pakistan*, the Lahore High Court held that the right to life, right to human dignity, right to property and right to information already provided by the Constitution, must extend to cover climate change. The court found that these provisions "provide the necessary judicial toolkit to address and monitor the Government's response to climate change" and ordered the government to appoint a climate change focal point. It also ordered the government to publish an adaptation action plan realisable within a few months of the order and to establish a Climate Change Commission to monitor progress.[34]

Failure to protect human rights/constitutional rights when taking action on climate change.

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[31] Rodríguez-Garavito, C. (ed): Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3860420 29.10.2024.

[32] Setzer, J. and C. Higham (2021). Global Trends in Climate Change Mitigation: 2021 Snapshot. London: Grantham Research Institute on Climate Change and Environment. https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf 29.10.2024.

[33] https://climatecasechart.com/non-us-case/brazilian-socialist-party-and-others-v-brazil/ 31.10.2024.

[34] https://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/31.10.2024.

In contrast to the previous two arguments, the negative duty of states to prevent human rights violations can be invoked here. The basis of this type of argumentation is that States' must ensure that mitigation and adaptation measures taken in response to climate change do not themselves contribute to human rights violations. For example, the rights of the members of the concerned public must be respected in the accelerated approval of renewable energy projects in the EU.

5.2. MAIN LEGAL QUESTIONS

Several legal questions may arise in rights-based climate change litigation, e.g. identifying the baseline rights and obligations applicable to climate change and human rights litigation, justiciable legal obligations of governments, as a matter of international human rights and climate change law, to reduce GHG emissions and extracting the specific rights and obligations related to climate action from these standards. The claim must meet procedural requirements to be admissible, including standing, which requires that applicants have legally protected interests/rights that entitle them to bring the claim to court. To date, admissibility can be considered as one of the main obstacles for climate litigation. Demonstrating a causal link between the respondents' actions and the infringement of the applicants' rights contributes to meeting the standing requirement.

Therefore, the key legal questions are:

- jurisdiction (including standing and the victim status);
- (non-)exhaustion of domestic remedies;
- extraterritorial obligation of states due to the nature of climate change and human rights;
- establishing a causal link;
- providing evidence.

The first procedural questions are whether a court is mandated to hear a claim about climate change and human rights violations, whether the legal dispute falls under its jurisdiction, and if the claim is admissible under the court proceeding rules.

As regards the ECtHR, Article 1 of ECHR states that the contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined therein. The main approach is that where States infringe human rights, those infringements are targeted at individuals within the State’s territory, i.e. the State has control over the victim, and exceptions (i.e., where state actions infringed upon the human rights of individuals outside their territory) are handled by the

notion of States' de facto control.[35] The exceptional circumstances envisioned by the ECtHR refer to cases where there is a certain qualified degree of control over the perpetrators and the affected individuals, even if they are outside the State's territory.

In climate cases, GHG emissions do not respect State borders, and the risk and harm produced by those usually have transboundary impacts. Thus, a State may effectively control the activities within their territory but may not exercise control over the victims of the risk or damage caused by those activities. In the *Duarte Agostinho* case, concerning extraterritorial jurisdiction, the ECtHR found no grounds to expand the judicial application as requested by the applicants. Territorial jurisdiction was established with respect to Portugal only, and the complaint was declared inadmissible against other respondent States. The ECtHR confirmed that if States lack effective control over the victim, they do not hold extraterritorial jurisdiction for the purposes of Article 1 of the ECHR, irrespective of their level of control over the source of the harm.

The next main controversial issue that must be determined is the question of legal standing, i.e. if the plaintiff has legally protected interests that entitle him/her to bring the claim to the forum in question. The procedural concept establishing standing before the ECtHR is the victim status. Article 34 ECHR states that the ECtHR may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the contracting parties of the rights outlined in the Convention or its Protocols. This Article establishes the procedural framework for individual applications. Still, it does not define 'victim status,' which is interpreted through case law: litigants must show that they are 'directly affected' by an interference with their human rights. This might be a significant problem because climate-related harm affects not only a few individuals but entire populations, making it challenging to show that the applicant is 'directly affected' by the effects of climate change.

The ECtHR interprets victim status independently, without relying on domestic interpretations.[36] In the case of *Cordella* v. *Italy*[37] a group of 196 persons living in a high environmental risk zone was recognized as victims, or in the case of *Pavlov and Others* v. *Russia*, a group was granted standing, although the applicants were living far from the polluting source.[38] In the case of the *KlimaSeniorinnen*, the individual applicants' complaints under Articles 2 and 8 of the ECHR

[35] In the case law of the ECtHR, *de facto* control is used to settle cases relating to an "effective overall control over a foreign territory," or where State agents exercise authority and control over individuals outside their territory. https://blogs.law.columbia.edu/climatechange/2024/04/12/states-extraterritorial-jurisdiction-for-climate-related-impacts/

[36] ECtHR, Kalfagiannis and Pospert v. Greece, KALFAGIANNIS AND POSPERT v. GREECE. ...HUDOC - European Court of Human Rightshttps://hudoc.echr.coe.int › conversion › docx › pdf 31.10.2024.

[37] ECtHR, Cordella and Others v. Italy, Cordella and Others v. ItalyHUDOChttps://hudoc.echr.coe.int › eng 31.10.2024.

[38] ECtHR, Pavlov and Others v. Russia, PAVLOV AND OTHERS v. RUSSIA - HUDOCHUDOChttps://hudoc.echr.coe.int › fre 31.10.2024.

were dismissed. However, the Court held that the applicant association did have standing. The ECtHR accepted a claim brought by an environmental NGO for the first time. It confirmed that the victim status is not to be applied in a *"rigid, mechanical and inflexible way."* Furthermore, the Court recognised that *"the special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context (…) speak in favour of recognising the standing of associations before the Court in climate-change cases."* These judgements may provide the basis for the ECtHR to recognise groups and environmental NGOs as victims (having legal standing) in rights-based climate cases in the future.

Another procedural issue is whether an application is admissible if domestic remedies have not been entirely exhausted. On the basis of Article 35(1) of the ECHR, the ECtHR will only deal with the case if all domestic remedies have been exhausted. At first sight, this criterion seems clear, but it is also obvious that conducting the national procedures can lead to serious delays in the resolution of the dispute. In the *Duarte Agostinho* case, for example, the plaintiffs brought their claims against 33 states and did not initiate domestic proceedings in each of them. The ECtHR - after declaring its jurisdiction in that case only in respect of Portugal - found the application inadmissible because the available remedies had not been used at national level.

To establish standing, a link between the climate harm and the violation of the applicants' human rights must also be demonstrated (**causation**). The complexity of climate change makes it difficult to attribute responsibility for climate change to a particular government (or a corporation) alone.[39]

The UN Committee on the Rights of the Child made the following statement in the case of Saachi vs Argentina: *„In accordance with the principle of common but differentiated responsibility, as reflected in the Paris Agreement, the Committee finds that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location."*[40]

In the *Urgenda* case, the Dutch government raised causation as part of its argument that Articles 2 and 8 of the ECHR do not contain obligations on the State to offer protection against the risks of climate change. The respondent argued that these risks are not sufficiently specific, do not fall under the responsibility of the Netherlands only, and that the environment was not protected under the ECHR. The Dutch court found that while the problem is global, each State

[39] https://verfassungsblog.de/klimaseniorinnen-and-the-questions-of-causation/29.10.2024.

[40] http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/ 29.10.2024.

must do its part, as acknowledged by parties to the UNFCCC, including the Netherlands. The judgement also explained that in light of climate change and human rights obligations, governing countries have to contribute a 'fair share' to global climate mitigation, as well as the well-established 'no harm principle', which gives rise to an obligation on states to prevent activities within their jurisdiction that cause cross-boundary environmental damage.[41]

In the case of the *KlimaSeniorinnen*, the applicant NGO argued that Article 8 of the ECHR was engaged by Switzerland's failure to take the necessary steps to reduce emissions and combat the immediate risk posed to its vulnerable elderly female members by the climate crisis. The Swiss government responded that climate change is a global problem and, therefore, the applicants could not attribute causation specifically to Switzerland. The respondent also stated that given the technical and complex nature of climate change, States have a wide margin of appreciation when taking measures to tackle climate change. In the judgement, the ECtHR observes that 'the specificity of climate-change disputes, in comparison with classic environmental cases, arises from the fact that they are not concerned with single-source local environmental issues but with a more complex global problem.'

The ECtHR explains the complexities of the causation question in human rights law by distinguishing its different dimensions. In its judgement, the ECtHR stated that there are different dimensions of the causation question:

- *The first dimension of the question of causation relates to the link between GHG emissions – and the resulting accumulation of GHG in the global atmosphere – and the various phenomena of climate change. This is a matter of scientific knowledge and assessment.*
- *The second relates to the link between the various adverse effects of the consequences of climate change, and the risks of such effects on the enjoyment of human rights at present and in the future. In general terms, this issue pertains to the legal question of how the scope of human rights protection is to be understood as regards the impacts arising for human beings from an existing degradation, or risk of degradation, in their living conditions.*
- *The third concerns the link, at the individual level, between a harm, or risk of harm, allegedly affecting specific persons or groups of persons, and the acts or omissions of State authorities against which a human rights-based complaint is directed.*

[41] https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/ 31.10.2024.

- *The fourth relates to the attributability of responsibility regarding the adverse effects of climate change claimed by individuals or groups against a particular State, given that multiple actors contribute to the aggregate amounts and effects of GHG emissions.'*[42]

Based on the judgement in the case of *KlimaSeniorinnen*, in the context of human rights-based complaints against States in climate change disputes, issues of causation arise in different respects which are distinct from each other and have a bearing on the assessment of victim status as well as the substantive aspects of the State's obligations and responsibility under the ECHR.

If a court finds the claim admissible, robust scientific **evidence** is critical to its success. Regarding compensatory damages claims, a causal link between the respondent's behaviour (omission) and the damage must be demonstrated by providing evidence. In other lawsuits where inadequate state and corporate climate change mitigation targets and policies are challenged, to establish admissibility, the claimant must prove that emissions resulting from the respondent's actions (omissions) led to impacts adversely affecting his/her rights. To establish causation, the court needs scientific evidence (expert opinion bound by rules on the independence of experts), witness testimonies, amicus briefs, etc. The rules on the evaluation of evidence may vary across jurisdictions.

Applicants in several cases (e.g. *Müllner v. Austria*[43] or *Duarte Agostinho*) are raising links between health impacts and climate change, as well as relying on tangible evidence of how climate change is explicitly impacting on the plaintiffs'/claimants' human rights.

In the case of *Duarte Agostinho*, the claimants have highlighted how climate change impacted on their lives, including their experiences of reduced energy levels, difficulty sleeping and climate anxiety, as well as restrictions in their freedom to spend time outdoors during heatwaves. In the *Müllner v. Austria* case, an Austrian citizen who has a temperature-dependent form of Multiple Sclerosis claims that his illness will only get worse as temperatures increase.

Experiences show that it is very difficult to prove causality in scientific terms. The fields of event attribution and trend detection evaluate the causal relationships in climate litigation. Attribution science covers methods which generally use counterfactual inquiry to link observed trends or

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42 https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/ 31.10.2024.

43 http://climatecasechart.com/non-us-case/mex-m-v-austria/31.10.2024.

changes in the probability or intensity of climate-related events to human influence.[44] There is limited precedent for courts to base findings of causation on such evidence, partly due to its relative novelty. A research[45] assessing 73 climate litigation cases concluded that the evidence submitted and referenced lags significantly behind the state-of-the-art in climate science, impeding causation claims. This study also concluded that greater appreciation and exploitation of existing methodologies in attribution science could address obstacles to causation and improve litigation prospects as a route to compensation for losses, regulatory action, and emission reductions by respondents seeking to limit their responsibility.

Beyond the difficulties in dealing with complex scientific evidence, it has to be noted that litigation is expensive, for example the high expert fees and legal costs may be a significant obstacle for litigation. Furthermore, legal procedures are time-consuming and the applicants may face resource and power asymmetries in cases brought against governments and corporations.

6. Legal avenues for protection of the Charter rights and principles

The protection of the Charter rights and principles could involve seeking redress, bringing claims against the government, and businesses and turning to the European Commission, the EU or national ombudsman or similar institutions for support in the implementation of rights. In the context of this project, we could formulate the following question for everyone who would rely on the Charter rights: “Can I go to court or can I use other mechanisms to seek protection of my Charter rights in the field of climate and energy”?

The Handbook on applying the Charter of Fundamental Rights of EU in law and policymaking at national level provides that:

*“National measures that are used to guarantee the application and effectiveness of EU law (sanctioning, remedies and **enforcement**) qualify as “implementation of Union law” in the sense of Article 51(1). EU fundamental rights apply to these national measures if they are used in this context. This rule normally applies irrespective of whether or not the Union legal act at*

[44] https://news.climate.columbia.edu/2021/10/04/attribution-science-linking-climate-change-to-extreme-weather/ 31.10.2024.

[45] Filling the evidentiary gap in climate litigation, https://www.nature.com/articles/s41558-021-01086-7 https://ora.ox.ac.uk/objects/uuid:bd7fc137-0311-4b6d-83e2-e906a25ed9ab/files/s5999n411b 29.10.2024.

*issue contains specific provisions (obligations) concerning the effectiveness (sanctioning, remedies and **enforcement**) of EU law."*

According to the Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union[46], the European Commission (EC)'s efforts to enforce fundamental rights will be guided by the principle of prevention and also resorting to infringement procedures.

The Commission could apply a preventive approach by reminding in appropriate cases the authorities responsible for transposing legislation of the obligation to comply with the Charter in implementing the legislation concerned. In cases when a Member State does not respect fundamental rights when implementing Union law, the EC, as guardian of the Treaties, using its powers will attempt to put an end to the infringement and, if necessary, take the matter to the Court of Justice (action for failure to fulfil an obligation). However, the EC may only intervene if the situation in question relates to Union law.

The European E-Justice Portal, in the section on protecting fundamental rights within the European Union[47] outlines various means and mechanisms provided by different **judicial and non-judicial bodies** for obtaining proper protection in the event of a breach of EU fundamental rights.

Firstly, the **judicial protection** of fundamental rights under the Charter is provided by the Court of Justice of the European Union in Luxembourg and by the national courts of the Member States. If the violation of fundamental rights derives from an EU measure, only the Court of Justice can annul the act which gave rise to the breach. There are two ways in which to prompt the Court of Justice to examine the compatibility with the Charter of an EU measure:

- through an action for annulment before the court, which has the jurisdiction to hear actions for annulment brought by individuals;
- through a reference to the Court of Justice for a preliminary ruling submitted by a national judicial body.

These two means of action are not interchangeable: they are subject to different requirements and procedural rules.

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[46] COMMUNICATION FROM THE COMMISSION Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union /* COM/2010/0573 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010DC0573

[47] https://e-justice.europa.eu/563/EN/part_i__protecting_fundamental_rights_within_the_european_union

If a national legal measure violates a fundamental right, then national courts are competent to provide protection to individuals (where the competent judicial body is identified according to the national jurisdiction provisions of the Member State). In order to do that, the national court must establish whether the issue falls within the scope of application of EU fundamental rights or whether it concerns only national fundamental rights. If EU fundamental rights apply, the national court must provide the protection they afford. Or the national court can submit a reference for a preliminary ruling to the Court of Justice on the interpretation of EU law.

There are also **non-judicial means** available to individuals to seek protection of the Charter rights and principles against the actions or inactions of EU institutions, bodies, offices and agencies such as filing a complaint to the European Ombudsman. The **right to turn to the European Ombudsman is a fundamental right enshrined in Article 43** of the Charter that enables EU citizens and residents in the Union to denounce issues of 'maladministration' by EU institutions, bodies and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

In case of breach of fundamental rights by a Member State, the individuals could file a complaint to the European Commission, concerning the infringement of fundamental rights by national authorities (providing they are acting within the scope of EU law or submit a petition to the European Parliament. The **right to petition is also a fundamental right laid down by Article 44 of the Charter** and it enables EU citizens and residents in the Union to draw the European Parliament's attention to a subject that falls within the competences of the Union and concerns the petitioner directly. More information on the right to petition can be found here.

The Charter provides for a separate legal avenue for protection of the rights before the administrative authorities in *Article 41 Right to good administration*.

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c)) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

The access to justice is also a fundamental right in the Charter laid down in Article 47 Right to an effective remedy and to a fair trial.

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources as far as such aid is necessary to ensure effective access to justice.

To exemplify the points above in the context of our project, in the table below we suggest some judicial and non-judicial means for protection of the Charter rights and principles within the respective participatory procedures of climate and energy policies and measures.

Stage	EU policy	EU project	Member State policy	Member State project
Consultation	Participate in consultation If failed, go to the EU Ombudsman or refer to Art. 9 of the Aarhus Regulation and try Request for Internal Review If that fails, go to EU Court as strategic litigation	If it is an administrative act of an EU institution, use Request for Internal Review If it is a state aid decision no legal remedy yet.	Use national participatory options especially SEA	Use national participatory options especially EIA

Adoption	Participate in the process of adoption If failed, go to the EU Ombudsman or refer to Art. 9 of the Aarhus Regulation and try Request for Internal Review If that fails, go to EU Court as strategic litigation	If it is an administrative act of an EU institution, use Request for Internal Review If it is a state aid decision, there is no remedy.	Use national participatory options especially SEA	Use national participatory options especially EIA
Amendment	Participate in the process of amendment If failed, go to the EU Ombudsman or refer to Art. 9 of the Aarhus Regulation and try Request for Internal Review If that fails, go to EU Court as strategic litigation	If it is an administrative act of an EU institution, use Request for Internal Review If it is a state aid decision, there is no remedy	Use national participatory options especially SEA	Use national participatory options especially EIA
Implementation	Petition to EU institutions Possibly strategic (climate or human rights) litigation	Take the response from the EU institution to the EU Court	Monitor the significant environmental effects of the implementation of plans and programmes Petition to MS institutions Take SEA outcome to court if available Possibly strategic (climate or human rights) litigation	Monitor environmental performance Take EIA outcome to court if available Possibly strategic (climate or human rights) litigation

7. Case law and other references (e.g. reports, academic publications)

This chapter aims to provide sources that could enable informed decision-making, advance legal debates, and contribute to the development of responses to environmental and climate challenges. The list of case law with brief summaries of the cases offers legal precedents that entail the application of human rights in climate matters, while also demonstrating the evolution of judicial thinking and enforcement strategies. Recent literature and other references will serve as a guide to sources that focus on theoretical concepts, empirical studies as well as emerging trends and challenges.

There are special reference pages on the website of the EU Agency for Fundamental Rights for each of the Articles of the Charter. The reference information is divided into 6 categories: Explanations, Case Law References, National Constitutional Law, EU Law, International Law and Products. See the reference page for Article 37 - Environmental protection | European Union Agency for Fundamental Rights.

The UNEP (2019) Environmental Rule of Law: First Global Report is also an important source that promotes the environmental rule of law. The United Nations defines rule of law as having three related components: **law should be consistent with fundamental rights**; law should be inclusively developed and fairly effectuated; and law should bring forth accountability not just on paper, but in practice—such that the law becomes operative through observance of, or compliance with, the law. In the words of David Boyd, the former UN Special Rapporteur on Human Rights and the Environment, the report solves the mystery of why problems such as pollution, declining biodiversity and climate change persist despite the proliferation of environmental laws in recent decades. Unless the environmental rule of law is strengthened, even seemingly rigorous rules are destined to fail and the fundamental human right to a healthy environment will go unfulfilled.

There is a second edition of the report: UNEP (2023) Environmental Rule of Law: Tracking Progress and Charting Future Directions

Open Society (2017) Infringement Proceedings as a Tool for the Enforcement of Fundamental Rights in the European Union

The study examines the process of infringement proceedings in law and practice and its place in the human rights architecture of the European Union, e.g. through referrals to the Court of Justice of the European Union by national courts. explores a number of new practices that could be introduced to strengthen the use of infringement proceedings as a fundamental rights

enforcement tool, including the status of the complainant who brings an alleged violation of EU law to the attention of the Commission; the use by the Commission of sources of information other than individual complaints; and the incentives that the member states could be given to better comply with fundamental rights in the implementation of EU law.

Case-law

"In Leth[48], the ECJ referred to the decision in Wells[49] – which had not used the term "right" in this regard – to conclude that Directive 85/337/EEC "confers on the individuals concerned a right to have the environmental effects of the project under examination assessed."

Case C-238/20 Request for a preliminary ruling - linking a right in the Charter of Fundamental Rights of the European Union – Article 17 – Right to property – Directive 2009/147/EC – Compensation for the damage caused to aquaculture by protected wild birds in a Natura 2000 area – Compensation less than the damage actually suffered – Article 107(1) TFEU – State aid – Concept of 'advantage' – Conditions – Regulation (EU) No 717/2014 – De minimis rule (example)

Case C-626/22 Request for a preliminary ruling under Article 267 TFEU from the Tribunale di Milano (District Court, Milan, Italy), made by decision of 16 September 2022, received at the Court on 3 October 2022, in the proceedings

(Reference for a preliminary ruling – Environment – Article 191 TFEU – Industrial emissions – Directive 2010/75/EU – Integrated pollution prevention and control – Articles 1, 3, 8, 11, 12, 14, 18, 21 and 23 – Articles 35 and 37 of the Charter of Fundamental Rights of the European Union – Procedures for the grant and reconsideration of a permit to operate an installation – Measures for the protection of the environment and human health – Right to a clean, healthy and sustainable environment)

71. In this connection, first, ***Article 35 of the Charter*** *of Fundamental Rights of the European Union ('the Charter') provides that a high level of human health protection is to be ensured in the definition and implementation of all the European Union's policies and activities. Secondly, in accordance with* ***Article 37 of the Charter****, a high level of environmental protection and the*

[48] Case C-420/11, Leth v. Austria, EU:C:2013:166.

[49] Case C-201/02, R (Wells) v. Secretary of State for Transport, Local Government and the Regions, EU:C:2004:12

improvement of the quality of the environment must be integrated into the policies of the European Union and ensured in accordance with the principle of sustainable development.

72. Having regard to the close link between the protection of the environment and that of human health, Directive 2010/75 seeks to promote not only the application of ***Article 37 of the Charter****, as stated in recital 45 of that directive, but also the application of Article 35 of the Charter, it* ***not being possible to achieve a high level of protection of human health without a high level of environmental protection****, in accordance with the principle of sustainable development. Directive 2010/75 thus contributes to protecting the right to live in an environment which is adequate for personal health and well-being, as referred to in recital 27 thereof.*

105. In the light of all the foregoing considerations, the answer to the first question is that Directive 2010/75, read in the light of Article 191 TFEU and Articles 35 and 37 of the Charter, must be interpreted as meaning that the Member States are required to provide that the prior assessment of the effects of the activity of the installation concerned on the environment and on human health must be an integral part of the procedures for granting or reconsidering a permit to operate such an installation under that directive.

Kraaijeveld and Others, C-72/95

In Kraaijeveld and Others, according to the court the procedural rights serve the purpose of ensuring the effective implementation of EU environmental law: 'In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts'.[50]

Armando Ferrão Carvalho and Others v. The European Parliament and the Council, T-330/18

[50] Kraaijeveld and Others, C-72/95, EU:C:1996:404, paragraph 56

In *Armando Ferrão Carvalho and Others v. The European Parliament and the Council*, a group of families from Europe and other regions filed a case with the European Court of Justice (ECJ), arguing that the EU's climate targets were insufficient to prevent harmful climate impacts that would violate their fundamental rights. The plaintiffs claimed that the EU's 2030 greenhouse gas emission reduction targets did not meet the level of action required under the Paris Agreement, nor did they adequately protect their rights to life, health, and occupation. The ECJ dismissed the case, ruling that the applicants did not have direct standing, as they could not prove that the EU's climate policies specifically affected them more than the general public. The decision highlighted the procedural hurdles individuals face when seeking to challenge EU climate policy on human rights grounds.

KlimaSeniorinnen v Switzerland, 53600/20 ECtHR

In the KlimaSeniorinnen case, in its judgment of 9 April 2024, the ECtHR found a violation of Article 8, which is to include, through evolutive interpretation, the right of the individual to effective protection by its state against adverse climate impacts. The court established that NGOs could claim standing to bring a complaint before the ECtHR against inadequate domestic climate measures. The court also referred in its judgment to Art. 37 and Art.47 of the Charter and the case-law of CJEU. The Court noted that the EU has developed a set of legal instruments concerning the implementation of the Aarhus Convention. The CJEU has found that Article 9 § 3 of the Aarhus Convention must be read in conjunction with Article 47 of the Charter of Fundamental Rights in ensuring that "a duly constituted environmental organisation operating in accordance with the requirements of national law" is able to contest a measure affecting the environment.

Sources and academic literature

UNEP (2021) Global Climate Litigation Report 2020 Status Review https://www.unep.org/resources/report/global-climate-litigation-report-2020-statusreview

Hermansen, S. S. L. (2020). Building legitimacy: strategic case allocations in the Court of Justice of the European Union. *Journal of European Public Policy*, *27*(8), 1215-1235.

Rodríguez-Garavito, C. (Ed.). (2022). Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action. Cambridge University Press.

Setzer J, Narulla H, Higham C and Bradeen E (2022) Climate Litigation in Europe: A summary report for the European Union Forum of Judges for the Environment. London and Brussels: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science and the European Union Forum of Judges for the Environment.

Alogna I, Billiet C, Fermeglia M, Holzhausen A (2023) Climate change litigation in Europe : regional, comparative and sectoral perspectives. Cambridge : Larcier-Intersentia, 2023

Dozsa K (2023) Children as Climate Citizens. A Sociolegal Approach to Public Participation. Routledge UK.

8. Summary

Chapter 1 introduces the EU Charter of Fundamental Rights as a modern bill of rights, part of the EU's primary legislation with its main contribution on the relevance of human rights in the context of law and policy making. It also explains the project's main premise for protection of the Charter rights and principles when implementing the EU law, with a special focus on climate and energy law and policy making.

Chapter 2 presents three key guidance documents useful for interpretation and implementation of the Charter. The first one is the Explanations relating to the Charter of Fundamental Rights. The second one is the Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union. The third one is the Handbook on applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level by the European Union's Agency for Fundamental Rights.

Chapter 3 provides an overview of the international and European human rights framework underpinning the right to a healthy environment and discusses the provisions of the Charter and the ECHR that are applicable in human rights-based litigation related to environmental protection.

Under Chapter 4 and the Annex, the main EU legal instruments and their provisions integrating environmental policy into energy and climate policy have been identified. National research will show how these policies and laws respect environmental and participatory rights enshrined in the Charter on a Member State level.

Chapter 5 reviewed the soft-law and policy framework supporting environmental human rights and access to justice, citing, among others, the European Green Deal, the Sustainable Development Goals (SDGs), the UN Guiding Principles on Business and Human Rights.

To make legal steps to improve access to justice and enforcement of rights under EU (climate, energy and environmental) law and the Charter, the main elements of strategic litigation have been presented in Chapter 6.

In Chapter 7 one could find case law and other sources that enable informed decision-making, advance legal debates, and contribute to the development of responses to environmental and climate challenges. The list of case law with brief summaries of the cases offers legal precedents that entail the application of human rights in climate matters, while also demonstrating the evolution of judicial thinking and enforcement strategies.

Annex

Legal instrument	Reference:	Summary/relevance
EU Climate Law Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999	Provisions integrating environmental protection: Article 2(2) Article 5(1) Article 5(3) Article 5(4)	The EU Climate Law requires the Member States to take the necessary measures at Union and national level to enable the collective achievement of the climate-neutrality objective by 2050. Member States are required to adopt adaptation strategies that are coherent, mutually supportive and co-beneficial to sectoral policies, and to work towards better integration of adaptation to climate change in a consistent manner across all policy areas, including relevant socio-economic and environmental policies and measures. Adaptation strategies shall focus in particular on the most vulnerable and affected populations and sectors and identify gaps in consultation with civil society. In their national adaptation strategies, Member States must take into account the specific vulnerability of relevant sectors, including agriculture, water and food systems and food security, and promote nature-based solutions and ecosystem-based adaptation.
	Procedural provisions: Article 7(1)-(2)	The EC assesses the consistency of national measures every five years. Where the national measures are inconsistent with the climate-neutrality objective or inconsistent with ensuring progress on adaptation, the EC may issue publicly available recommendations to that Member State.
Climate and Energy Governance Regulation Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC,	Provisions integrating environmental protection: Article 8(1)(b) Article 14(4) Article 15(4) Annex I pt 5.2	National energy and climate plans (NECP) to be prepared and submitted to the EC must set out objectives, targets and contributions in decarbonisation, energy efficiency, energy security, the internal energy market and research, innovation and competitiveness. The main content of NECPs is included in Annex I which refers to the impact assessment of the planned policies and measures. This shall include – inter alia - the assessment of policy interactions (between existing policies and measures and planned policies and measures within a policy dimension and between existing policies and measures and planned policies and measures of different dimensions) and to the extent feasible, environmental aspects (in terms of costs and benefits as well as cost-effectiveness) of the planned policies and measures. Member States must make efforts to mitigate any adverse environmental impacts when updating the NECP. National long-term strategies with a perspective of at least 30 years are also to be prepared and updated every five years. Long-term strategies shall cover e.g. expected socio-economic effect of the decarbonisation measures, including aspects related to environmental protection.

2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council	Procedural provisions: Preamble (28)-(30) Article 10 Article 11	As the implementation of policies and measures adopted under the Regulation has an impact on the environment, Member States must ensure that the public is given early and effective opportunities to participate in and to be consulted on the preparation of the NECP and the long-term strategies in accordance the SEA Directive and the Aarhus Convention. The Regulation requires that equal participation must be provided when carrying out public consultations. The public must be informed by public notices or other appropriate means, such as electronic media, that it can access all relevant documents and that practical arrangements related to the public's participation are put in place. The public must be informed and provided with reasonable timeframes, allowing sufficient time to participate and express views.

EU ETS Directive Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC	Provisions integrating environmental protection: Article 4 Article 10(3)(c), (e) (3)(hb) Article 10a(1)	The EU ETS is the EU's main instrument for reducing emissions. Its latest reform (Directive (EU) 2023/959) includes extending the scheme to cover emissions from maritime transport, faster reduction in the number of allowances, and the phasing out of free allowances in certain sectors. Achieving the increased climate ambition will require substantial public and private resources in the Union as well as in Member States to be dedicated to the climate transition. To complement and reinforce the significant climate-related spending in the Union budget, all auction revenues that are not attributed to the Union budget in the form of own resources or the equivalent financial value of such auction revenues, must be used for climate-related purposes, except for the revenues used for the compensation of indirect carbon costs. The list of climate-related purposes in Article 10(3) of Directive 2003/87/EC has to be expanded to cover additional purposes with a positive environmental impact. This must include use for financial support to address social aspects in lower- and middle-income households by reducing distortive taxes and targeted reductions of duties and charges for renewable electricity. Member States must report annually on the use of auctioning revenues in accordance with Article 19 of Regulation (EU) 2018/1999 specifying which revenues are used and the actions that are taken to implement their integrated national energy and climate plans and their territorial just transition plans. The free allocation of emission allowances to stationary installations from 2026 onwards has to be conditional on investments in techniques to increase energy efficiency and reduce emissions, in particular for large energy users. The Commission will adopt delegated acts to address any identified issue and provide for administratively simple rules for applying conditionality. No installation may carry out any activity listed in Annex I resulting in emissions specified in relation to that activity unless its operator holds a permit or the installation is excluded from the EU ETS. The greenhouse gas emissions permit might be granted if it is satisfied that the operator is capable of monitoring and reporting emissions.

	Procedural provisions: Article 3gg(5) Article 8 Article 30f	The EU ETS Directive requires coordination with Directive 2010/75/EU. In this context, Member States must take the necessary measures to ensure that, where installations carry out activities that are included in Annex I to Directive 2010/75/EU, the conditions and procedure for the issue of a greenhouse gas emissions permit are coordinated with those for the issue of a permit provided for in that Directive. The requirements laid down in Articles 5, 6 and 7 of this Directive may be integrated into the procedures provided for in Directive 2010/75/EU. The Commission has to review the effectiveness of synergies with Directive 2010/75/EU. Environmental and climate-relevant permits shall be coordinated to ensure efficient and speedier execution of measures needed to comply with Union climate and energy objectives. By July 2026, the Commission should assess and report to the European Parliament and to the Council on the feasibility of including municipal waste incineration installations in the EU ETS, including with a view to their inclusion from 2028, and provide an assessment of the potential need for an option for a Member State to opt out until the end of 2030, taking into account the importance of all sectors contributing to emission reductions. In its report the Commission takes into account the potential diversion of waste towards disposal by landfilling in the Union and waste exports to third countries, the effects on the internal market, potential distortions of competition, environmental integrity, and robustness and accuracy with respect to the monitoring and calculation of emissions. By 31 December 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall examine the feasibility and economic, environmental and social impacts of the inclusion in this Directive of emissions from ships, including offshore ships, below 5 000 gross tonnage but not below 400 gross tonnage, building, in particular, on the analysis accompanying the review of Regulation (EU) 2015/757 due by 31 December 2024.
CBAM Regulation Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism	Provisions integrating environmental protection: Preamble (1), (19), (20), (24)	The Carbon Border Adjustment Mechanism Regulation has been adopted to counter the risk of carbon leakage. It operates by imposing a charge on the embedded carbon content of certain imports that is equal to the charge levied on domestic goods under the ETS, with adjustments being made to this charge to consider any mandatory carbon prices in the exporting country. To ensure no double benefit is afforded to EU producers, the CBAM will replace the free ETS allowances currently granted to EU producers assessed to be at high risk of carbon leakage. Therefore, by imposing an equivalent carbon price on the imports of covered goods, the playing field is levelled for both EU producers and EU importers of such goods as partner countries are encouraged to decarbonize their production processes.

	Procedural provisions: Preamble (65), (77), (78) Article 27(1), (2), (4) and (5)	The power to adopt further detailed rules regarding the CBAM is delegated to the Commission. During its preparatory work, the Commission carries out appropriate consultations in a transparent manner and may include prior consultations of stakeholders, such as competent bodies, industry (including SMEs), social partners such as trade unions, civil society organisations and environmental organisations. The Commission shall take action to address practices of circumvention of the CBAM Regulation. Practices of circumvention can be a change in the pattern of trade in goods, which stems from a practice, process or work, for which there is insufficient due cause or economic justification other than to avoid, wholly or partially, any of the obligations laid down in the CBAM Regulation. A Member State or any party that has been affected by, or has benefited from, any of these situations may notify the Commission if it is confronted with practices of circumvention. Interested parties other than directly affected or benefited parties, such as environmental organisations and non-governmental organisations, which find concrete evidence of practices of circumvention may also notify the Commission. The notification has to state the reasons on which it is based and shall include relevant data and statistics to support the claim of circumvention, and the Commission shall initiate an investigation.
LULUCF Regulation Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU	Provisions integrating environmental protection: Article 6(1) Article 8(1),	This Regulation is aimed at ensuring that emissions and removals from land use, land use change and forestry (LULUCF) activities are accurately accounted for in the EU's climate targets. The LULUCF sector extends to the use of soils, trees, plants, biomass and timber and is responsible for both emitting and absorbing CO2 from the atmosphere. The provisions of the Regulation are designed to increase removals and reduce emissions in these sectors. Member States shall account for emissions and removals resulting from - afforested land and deforested land, as being the total emissions and total removals for each of the years in the periods from 2021 to 2025 and from 2026 to 2030; - managed forest land, calculated as emissions and removals in the periods from 2021 to 2025 and from 2026 to 2030 minus the value obtained by multiplying by five the forest reference level of the Member State concerned.

	Procedural provisions: Article 8(3) Article 14 Article 15	Member States prepare and submit to the Commission their national forestry accounting plans, including a proposed forest reference level, by 31 December 2018 for the period from 2021 to 2025 and by 30 June 2023 for the period from 2026 to 2030. The national forestry accounting plan shall be made public, including via the internet. When the Commission assesses the national forestry accounting plans, including the forest reference levels proposed therein, it should build on the good practice and experience of the expert reviews under the UNFCCC. The Commission must also consult stakeholders and civil society. By 15 March 2027 for the period from 2021 to 2025, and by 15 March 2032 for the period from 2026 to 2030, Member States shall submit to the Commission a compliance report containing the balance of total emissions and total removals for the relevant period on each of the land accounting categories. The Commission performs a comprehensive review of the compliance reports. Article 15 of the LULUCF Regulation requires that the Commission adopt delegated acts to lay down the rules for recording the quantity of emissions and removals for each land accounting category in each Member State and ensure accurate accounting. The Central Administrator conducts an automated check on each transaction under LULUCF Regulation and, where necessary, blocks transactions to ensure that there are no irregularities. The information under Article 15 must be accessible to the public.
Effort Sharing Regulation (ESR) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the	Provisions integrating environmental protection: Preamble (22) Article 2	The ESR requires EU Member States to achieve minimum contributions for the period from 2021 to 2030 to fulfil the European Union's target of reducing its greenhouse gas emissions by 30 % below 2005 levels in 2030 in the sectors covered by its Article 2. It also lays down rules for determining annual emission allocations and evaluating Member States' progress towards meeting their minimum contributions. Information regarding accounting under this Regulation must be accessible to the public. The necessary provisions for accounting of transactions should be contained in a single instrument combining the accounting provisions under Regulation (EU) No 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions, the LULUCF Regulation and the ETS Directive.

Paris Agreement and amending Regulation (EU) No 525/2013	Procedural provisions: Preamble (22) Article 8 Article 12	The ESR refers to the Aarhus Convention and points out that public scrutiny and access to justice are essential elements of the democratic values of the Union and tools to safeguard the rule of law. The ESR amended **Regulation (EU) 2018/842 and introduced the provisions on „corrective action".** If the Commission finds, in its annual assessment under Article 29 of Regulation (EU) 2018/1999 (Governance Regulation) and taking into account the intended use of the flexibilities, that a Member State is not making sufficient progress towards meeting its obligations, that Member State shall, within three months, submit to the Commission a corrective action plan. The Member State must make the corrective action plan and any justification publicly available. The Commission is responsible to ensure the accurate accounting under this Regulation through the Union Registry in respect of annual emission allocations, flexibilities exercised, compliance checks, adjustments and the safety reserve. The Central Administrator conducts an automated check on each transaction in the Union Registry that results from this Regulation and, where necessary, blocks transactions to ensure that there are no irregularities. This information in the Registry shall be accessible to the public.

Renewable Energy Directive **Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (REDII)** **Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (RED III)**	Provisions integrating environmental protection: Article 3 Article 4	RED II, as revised under the Fit for 55 package (RED III), increases the EU's binding renewable energy target for 2030 to a minimum of 42.5%. RED II and III support the uptake of renewables across various sectors of the economy with a set of dedicated targets and measures. The new measures include an indicative annual increase of renewable energy use in industry of at least 1.6 percentage points by 2030 as well as a new binding target of 42% of renewable hydrogen in total hydrogen consumption in industry by 2030. As regards transport, the aim is to either reduce by 14.5% the greenhouse gas intensity of transport fuels or achieve an overall rate of 29% of renewable energy in final energy consumption across all transport sectors. This represents an increase from the previous binding target of 14%. There is also a combined sub-target of 5.5% of advanced biofuels and renewable fuels of non-biological origin, with a minimum level of 1% of renewable fuels of non-biological origin. There is also an indicative target of 1.2% of renewables in the maritime transport fuels sector. A pathway for a gradual increase of renewables in heating and cooling is also set by binding targets for all Member States. Member States shall include the policies and measures planned and taken to achieve such an indicative increase in their integrated national energy and climate plans and their integrated national energy and climate progress reports. Member States shall take measures to ensure that energy from biomass is produced in a way that minimises undue distortive effects on the biomass raw material market and an adverse impact on biodiversity, the environment and the climate. Member States must design support schemes for energy from biofuels, bioliquids and biomass fuels in such a way as to avoid incentivising unsustainable pathways and distorting competition with the material sectors, with a view to ensuring that woody biomass is used according to its highest economic and environmental added value.

	Procedural provisions: Article 3(3) Article 4(8) Article 15c (1),(2),(3) Article 15d(1),(2) Article 15e(1) (2) (3) Article 16 Articles 16a-f Article 18(6) Article 21(1),(6) Article 22(1),(4)	By 2027, the Commission shall publish a report on the impact of the Member States' support schemes for biomass, including on biodiversity, on the climate and the environment, and on possible market distortions, and shall assess the possibility for further limitations regarding support schemes for forest biomass. By 31 December 2021 and every three years thereafter, the Commission reports to the European Parliament and to the Council on the performance of support for electricity from renewable sources granted by means of tendering procedures in the Union, analysing in particular the ability of tendering procedures to provide non-discriminatory participation of small actors and, where applicable, local authorities and to limit environmental impacts. **Renewables acceleration areas:** Member States are required to identify areas with strong potential for the deployment of renewable energy and, within these, renewable acceleration areas ('RAAs') where the environmental impacts of the deployment of renewables are expected to be low. These dedicated acceleration areas for renewables will enjoy simpler and shorter permitting procedures, with full environmental assessments replaced by a shorter screening for most cases. Deadlines are one year for permits for new projects and six months for repowering initiatives. By 21 February 2026, Member States have to adopt one or more **plans designating renewables acceleration areas** for one or more types of renewable energy sources. In those plans, MS's competent authorities shall take environmental interests into account, as specified in the new Article 15c of RED II. The rules have to be targeted to the specificities of each identified renewables acceleration area, to the type or types of renewable energy technology to be deployed in each area and to the identified environmental impact. In the plans, the assessment made to identify each designated renewables acceleration area has to be explained and appropriate mitigation measures must be identified. Before their adoption, **the plans designating renewables acceleration areas must undergo a strategic environmental assessment pursuant to Directive 2001/42/EC (SEA)**, and, if they are likely to have a significant impact on Natura 2000 sites, to the appropriate assessment pursuant to Article 6(3) of Directive 92/43/EEC (Habitats Directive). The plans adopted must be made publicly available and reviewed periodically, as appropriate, in particular in the context of the updating of the integrated national energy and climate plans.

		Public participation must be ensured regarding the plans designating renewables acceleration areas, in accordance with Article 6 of the SEA Directive, including identifying the public affected or likely to be affected. Public acceptance of renewable energy projects has also to be promoted by means of direct and indirect participation of local communities in those projects. **Areas for grid and storage infrastructure necessary to integrate renewable energy into the electricity system:** Member States may adopt one or more **plans to designate dedicated infrastructure areas for the development of grid and storage projects** where such development is not expected to have a significant environmental impact, such an impact can be duly mitigated or, where not possible, compensated for. Where needed to accelerate the deployment of renewable energy to achieve the climate and renewable energy targets, **Member States may exempt grid and storage projects which are necessary to integrate renewable energy into the electricity system from the environmental impact assessment (under the EIA Directive), from an assessment of their implications for Natura 2000 sites and from the assessment of their implications on species protection (under the Habitats and Birds Directive).** Member States may also grant such exemptions in relation to infrastructure areas designated before 20 November 2023 if they were subject to an environmental assessment pursuant to Directive 2001/42/EC. Such derogations do not apply to projects that are likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests. Where a Member State exempts grid and storage projects from the assessments mentioned above, the competent authorities carry out a **screening process** of projects that are in dedicated infrastructure areas. Such a screening process is based on existing data from the environmental assessment pursuant to the SEA Directive. The Directive sets out the main rules for the **organisation and main principles of the permit-granting procedure.** One or more contact points must be designated by the MSs, which have to guide and facilitate the applicant during the entire administrative permit application and permit-granting procedure. The contact point makes available a manual of procedures for developers of renewable energy plants and shall provide that information online, addressing small-scale renewable energy projects, renewable self-consumers projects, and renewable energy communities.

		Applicants and the general public must have easy access to simple procedures for settling disputes concerning the permit-granting procedure and issuing permits to build and operate renewable energy plants, including, where applicable, alternative dispute resolution mechanisms. Member States shall ensure that administrative and judicial appeals in the context of a project for the development of a renewable energy plant, the connection of that plant to the grid, and the assets necessary for the development of the energy infrastructure networks required to integrate energy from renewable sources into the energy system, including appeals related to environmental aspects, are subject to the most expeditious administrative and judicial procedure that is available at the relevant national, regional and local level. Adequate resources have to be provided to ensure qualified staff, upskilling and reskilling of their competent authorities in line with the planned installed renewable energy generation capacity provided for in their integrated national energy and climate plans. RED II as amended lays down the rules of permit-granting procedure in renewables acceleration areas and outside renewables acceleration areas, for repowering, for the installation of solar energy equipment, for the installation of heat pumps. It ensures shorter administrative time-limits, exemptions and derogations from the EIA Directive, the Birds and Habitats Directives, the possibility for tacit agreement of authorities. The necessary information and the decisions taken by the competent authorities have to be publicly available. Renewable energy projects will benefit from an o**verriding public interest presumption.** Where necessary, they can obtain a simplified assessment for specific derogations under the relevant Union environmental legislation. **RED III introduced the presumption of "overriding public interest" into the permitting procedures for the purposes of the** EIA Directive, the Birds and Habitats Directives and the Water Framework Directive**.** By 21 February 2024, Member States had to ensure that, in the permit-granting procedure, the planning, construction and operation of renewable energy plants, the connection of such plants to the grid, the related grid itself, and storage assets are presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in individual cases. **Information and training:** Member States develop suitable information, awareness-raising, guidance or training programmes to inform citizens of how to exercise their rights as active customers.

Energy Efficiency Directive (EED) Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955	Provisions integrating environmental protection: Preamble (35), (51) Article 3(1),(5)(a) Article 4 Article 8	The new EED strengthens the leadership role to be played by the public sector in enhancing energy efficiency. The public sector is subject to a new annual energy consumption reduction target of 1.9%. The Member States' obligation to renovate each year at least 3% of total floor area of buildings owned by the public administration is extended from the central government to all levels of public administration. The EED also ensures energy efficiency considerations in public procurement. In particular, public bodies will have to systematically take into account energy efficiency requirements when making decisions regarding the purchase of products, buildings, and services, thereby fostering systematic improvements. The private sector is encouraged to be more energy efficient via operating energy management system or the carrying out of energy audits. EED also introduces a reporting scheme for the energy performance of large data centres, promoting transparency and optimisation of energy efficiency potential. The definition of efficient district heating and cooling has been revised, and minimum requirements will be gradually changed to allow for a progressive integration of renewable energy and waste heat and cold in the system. Under the revised EED, **EU countries will also have to promote local heating and cooling plans in large municipalities having populations above 45,000.** Member States have to establish digital platforms or tools to collect the aggregated consumption data from public bodies, make them publicly available, and report the data to the EC. Member States monitor how the energy efficiency requirements are taken into account by contracting authorities and contracting entities in the procurement of products, buildings, works and services by ensuring that information about the impact on the energy efficiency of those winning tenders above the thresholds referred to in the procurement directives are made publicly available. The contribution of renewable energy communities and citizen energy communities should be recognised and actively supported. Member States should, therefore, consider and promote the role of renewable energy communities and citizen energy communities. The EED points out that it necessary to ensure that people affected by energy poverty, vulnerable customers, people in low-income households and, where applicable, people living in social housing are protected and, to that end, empowered to actively participate in the energy efficiency improvement interventions, measures and related consumer protection or information measures that Member States implement. Targeted awareness-raising campaigns should be developed to illustrate the benefits of energy efficiency as well to provide information on the financial support available. In accordance with the energy efficiency first principle, Member States must ensure that energy efficiency solutions are assessed in planning, policy and major investment decisions. In applying the energy efficiency first principle, Member States shall promote and, where cost-benefit

Electricity Market Regulation Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity	Provisions integrating environmental protection: Article 7a(4)(c), (8) Article 18(2)(f) Article 23-24	The Regulation refers to that the rules on functioning of the internal market for electricity include requirements related to the development of renewable forms of energy and environmental policy. Among the principles regarding the operation of electricity markets, the Regulation mentions that the market must enable the decarbonisation of the electricity system and thus the economy, including by enabling the integration of electricity from renewable energy sources and by providing incentives for energy efficiency and it has to deliver appropriate investment incentives for generation, in particular for long-term investments in a decarbonised and sustainable electricity system, energy storage, energy efficiency and demand response. As a new tool to optimise energy consumption, reduce utility costs, and lessen the strain on the power grid during peak demand periods, Article 7a of the Regulation introduced the concept of peak shaving products. Where a regional or Union-wide electricity price crisis is declared (see Article 66a of Directive (EU) 2019/944), Member States may request system operators to propose the procurement of peak-shaving products in order to achieve a reduction of electricity demand during peak hours. The proposal for a peak-shaving product explains the dimensioning of the product which is based on an analysis of the need for an additional service to ensure security of supply without endangering grid stability, of its impact on the market and of its expected costs and benefits. **The procurement of the peak-shaving product takes place using competitive bidding, which can be continuous, with selection based on the lowest cost of meeting pre-defined technical and environmental criteria and it shall allow the effective participation of consumers, directly or through aggregation.** The regulatory authority will assess the proposal for a peak-shaving product. By six months after the end of a regional or Union-wide electricity price crisis, ACER shall, after consulting stakeholders, assess the impact of using peak-shaving products on the Union electricity market. **Charges applied** by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, have to be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. **Tariff methodologies** must inter alia contribute to the achievement of the objectives set out in the integrated national energy and climate plans, reduce the environmental impact and promote public acceptance. The **European resource adequacy assessment** identifies resource adequacy concerns by assessing the overall adequacy of the electricity

	Procedural provisions: Article 24(2)	system to supply current and projected demands for electricity at Union level, at the level of the Member States, and at the level of individual bidding zones, where relevant. The European resource adequacy assessment shall cover each year within a period of 10 years from the date of that assessment. This assessment is based on a transparent methodology which ensures that the assessment is based on appropriate central reference scenarios of projected demand and supply including an economic assessment of the likelihood of retirement, mothballing, new-build of generation assets and measures to reach energy efficiency and electricity interconnection targets and appropriate sensitivities on extreme weather events, hydrological conditions, wholesale prices and carbon price developments. **National resource adequacy assessments** have a regional scope. Where the national resource adequacy assessment identifies an adequacy concern with regard to a bidding zone that was not identified in the European resource adequacy assessment, the national resource adequacy assessment shall include the reasons for the divergence between the two resource adequacy assessments, including details of the sensitivities used and the underlying assumptions. Member States publish that assessment and submit it to ACER. Within two months of the date of the receipt of the report, ACER provides an opinion on whether the differences between the national resource adequacy assessment and the European resource adequacy assessment are justified. The body that is responsible for the national resource adequacy assessment shall take due account of ACER's opinion, and where necessary shall amend its assessment. Where it decides not to take ACER's opinion fully into account, the body that is responsible for the national resource adequacy assessment shall publish a report with detailed reasons. **National resource adequacy assessments** and, where applicable, the European resource adequacy assessment and the opinion of ACER on the national assessment **must be made publicly available.**

Directive 2019/944/EU on common rules for the internal market for electricity (EMD)	Provisions integrating environmental protection: Article 8(2)(b),(c),(d) Article 9(1),(2),(4) Article 31 Article 58	**Authorisation procedure for new capacities:** The EMD provides that for the construction of new generating capacity, an authorisation procedure must be conducted in accordance with objective, transparent and non-discriminatory criteria. **These criteria have to consider the protection of public health and safety, the protection of the environment and land use and siting as well.** **Public service obligations:** Electricity undertakings must operate with a view to achieving a competitive, secure and environmentally sustainable market for electricity. Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including the security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Member States inform the Commission of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. **General objectives of the regulatory authority:** The objective of an environmentally sustainable internal market for electricity is also enshrined in the EMD. The regulatory authority has to, in close consultation with other relevant authorities, take all reasonable measures to promote a competitive, flexible, secure and environmentally sustainable internal market in electricity within the Union. **Tasks of distribution system operators:** The distribution system operator is responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity, for operating, maintaining and developing under economic conditions a secure, reliable and efficient electricity distribution system in its area with due regard for the environment and energy efficiency.
	Procedural provisions: Article 60(2)	**Decisions and complaints:** Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, issues a decision within two months of receipt of the complaint.

Regulation on Deforestation-free Products (EUDR) Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010	Provisions integrating environmental protection: Preamble (45), (54), (78) Article 4 Article 8	The EUDR is an important instrument in the fight against deforestation and it will start to apply on 30 December 2024. The new rules apply if certain products (e.g. palm oil, cattle, soy, coffee, cocoa, timber and rubber) are placed on the EU market or export from the EU. The Regulation applies for any quantity of product. Operators must collect information, documents and data showing that the product is deforestation-free and legal, such as geolocation coordinates, quantity, country of production. A benchmarking system operated by the Commission will classify countries or areas into three risk categories according to the risk of producing commodities there that are not deforestation-free. **The Regulation directly refers to the Charter by setting out that this legislation is aimed at ensuring a proper balance between the protection of the legitimate expectations of operators and traders placing relevant commodities and relevant products on the market or exporting them, while minimising sudden disruption to supply chains, and the fundamental right to protection of the environment as established in Article 37 of the Charter of Fundamental Rights of the European Union.** To foster transparency and facilitate enforcement, operators which are not SMEs, including microenterprises, or natural persons should, on an annual basis, publicly report on their due diligence system, including on the steps taken to fulfil their obligations.

	Procedural provisions: Article 14 Article 16(15) Article 22 Article 25(1),(2) Article 32(1)	Member States designate one or more competent authorities responsible for fulfilling the obligations arising from this Regulation and inform the Commission of the contact details of them. The Commission makes the list of the competent authorities publicly available on its website. The competent authorities carry out checks to establish whether operators and traders established in the Union comply with the EUDR and to establish whether the relevant products that the operator or trader has placed or intends to place on the market, has made available or intends to make available on the market or has exported or intends to export comply with this Regulation. Records of checks and reports of their results constitute environmental information and must be made available upon request. Member States lay down rules on penalties applicable to infringements of the EUDR by operators and traders and take all measures necessary to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive. Those penalties shall include fines proportionate to the environmental damage and the value of the relevant commodities or relevant products concerned, calculating the level of such fines in such way as to ensure that they effectively deprive those responsible of the economic benefits derived from their infringements, and gradually increasing the level of such fines for repeated infringements; in the case of a legal person, the maximum amount of such a fine shall be at least 4 % of the operator's or trader's total annual Union-wide turnover in the financial year preceding the fining decision, calculated in accordance with the calculation of aggregate turnover for
CAP Strategic Plans Regulation Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for	Provisions integrating environmental protection: Article 5 Article 6	**General objectives** of the Regulation are to foster a smart, competitive, resilient and diversified agricultural sector ensuring long-term food security, to support and strengthen environmental protection, including biodiversity, and climate action and to contribute to achieving the environmental and climate-related objectives of the Union, including its commitments under the Paris Agreement and to strengthen the socio-economic fabric of rural areas. The general objectives are pursued by **specific objectives**, such as to contribute to climate change mitigation and adaptation, including by reducing greenhouse gas emissions and enhancing carbon sequestration, to foster sustainable development and efficient management of natural resources such as water, soil and air, including by reducing chemical dependency and to contribute to halting and reversing biodiversity loss, enhance ecosystem services and preserve habitats and landscapes.
	Procedural provisions:	The CAP Strategic Plans have to be prepared on the basis of transparent procedures and the competent authorities for the environment and climate must be effectively involved in the preparation of the

Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013	Article 106 Article 135(1), (12) Article 140	environmental and climate-related aspects thereof. Member States must organise a partnership with the following partners: - relevant authorities at regional and local level, as well as other public authorities, including authorities competent for environmental and climate issues; - economic and social partners, including representatives of the agricultural sector; - relevant bodies representing civil society and, where relevant, bodies responsible for promoting social inclusion, fundamental rights, gender equality and non-discrimination. Member States must effectively involve those partners in the preparation of the CAP Strategic Plans and shall consult with relevant stakeholders. **Annual performance reports:** Member States are required to provide an annual performance report on the implementation of the CAP Strategic Plan. The annual performance reports, as well as a summary for citizens of their content, must be made available to the public. **Evaluation of CAP Strategic Plans during the implementation period and ex post:** Member States carry out evaluations of effectiveness, efficiency, relevance, coherence, Union added value and impact in relation to their contribution to achieving the CAP general objectives in relation to their CAP Strategic Plans during implementation and ex post. Evaluations must be made by independent experts and, when ready, available to the public.
Corporate Sustainability Reporting Directive (CSRD) Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting	Provisions integrating environmental protection: Article 1	The EU requires certain companies to disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment. In the Green Deal, the Commission committed itself to support businesses and other stakeholders in developing standardised natural capital accounting practices within the Union and internationally, with the aim of ensuring appropriate management of environmental risks and mitigation opportunities. The CSRD amended **Directive 2013/34/EU (the Accounting Directive) with the terms of "sustainability matters"** (environmental, social and human rights, and governance factors, including sustainability factors) and "**sustainability reporting**" (reporting information related to sustainability matters). The amendment also introduced the obligations of sustainability reporting and consolidated sustainability reporting into the Accounting Directive.

		Sustainability reporting means that large undertakings, and small and medium-sized undertakings, except micro undertakings, which are public-interest entities shall include in the management report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position. Parent undertakings of a large group shall include in the consolidated management report information necessary to understand the group's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the group's development, performance and position (consolidated sustainability reporting). Where an undertaking is required by Union law to have elements of its sustainability reporting verified by an accredited independent third party, the report of the accredited independent third party is made available either as an annex to the management report or by other publicly accessible means. On the other hand, the CSRD also amended the Audit Directive (Directive 2006/43/EC). In relation to the assurance report on sustainability reporting, the statutory auditor(s) or the audit firm(s) must present the results of the assurance of sustainability reporting in an assurance report on sustainability reporting. After consulting the European Environment Agency and the European Union Agency for Fundamental Rights, ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the supervision of sustainability reporting by national competent authorities.
Taxonomy Regulation	Provisions integrating environmental protection: Article 3 Article 4 Article 5-17 Article 20 Article 25	This Regulation applies to measures adopted by Member States or by the Union that set out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable, to financial market participants that make available financial products and to undertakings subject to the obligation to publish a non-financial statement or a consolidated non-financial statement. The environmental objectives referred by the Regulation are - climate change mitigation; - climate change adaptation; - the sustainable use and protection of water and marine resources;

	Article 26	- the transition to a circular economy; - pollution prevention and control; - the protection and restoration of biodiversity and ecosystems. The Regulation sets out uniform criteria for determining whether economic activities contribute substantially to the environmental objectives and to avoid significant harm to any of those objectives. The criteria consider the life cycle of the products and services provided by that economic activity in addition to the environmental impact of the economic activity itself, including taking into account evidence from existing life-cycle assessments, in particular by considering their production, use and end of life. The criteria for environmentally sustainable economic activities should be regularly updated. **Criteria for environmentally sustainable economic activities** An economic activity qualifies as environmentally sustainable where that economic activity: - contributes substantially to one or more of the environmental objectives set out the Regulation; - does not significantly harm any of these environmental objectives; - is carried out in compliance with the minimum safeguards; and - complies with technical screening criteria that have been established by the Commission. These criteria must apply for environmentally sustainable economic activities in public measures, in standards and in labels. Transparency of environmentally sustainable investments and financial products that promote environmental characteristics in pre-contractual disclosures and in periodic reports must be ensured. **Transparency of undertakings in non-financial statements:** Any undertaking which is subject to an obligation to publish non-financial information pursuant to Directive 2013/34/EU (see above) shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable under this Regulation. This information must cover the proportion of their turnover derived from products or services associated with environmentally sustainable

		economic activities and the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with environmentally sustainable economic activities. The Commission adopts a delegated act to specify the content and presentation of the information to be disclosed, including a methodology, taking into account the specificities of both financial and non-financial undertakings and the technical screening criteria by 1 June 2021. The Regulation lays down the criteria meeting which an activity qualifies as performing substantial contribution to the environmental objectives. **Enabling activities** have been determined as contributing substantially to one or more of the environmental objectives, if it does not lead to a lock-in of assets that undermine long-term environmental goals, considering the economic lifetime of those assets and if it has a substantial positive environmental impact, on the basis of life-cycle considerations. The Taxonomy Regulation amended Regulation (EU) 2019/2088 by inserting the principle of DNSH. **An economic activity is considered to significantly harm:** - **climate change mitigation**, where that activity leads to significant greenhouse gas emissions; - **climate change adaptation**, where that activity leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets; - the sustainable use and protection of water and marine resources, where that activity is detrimental: ● to the good status or the good ecological potential of bodies of water, including surface water and groundwater; or ● to the good environmental status of marine waters; - **the circular economy**, including waste prevention and recycling, where: ● that activity leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products;

		● that activity leads to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or ● the long-term disposal of waste may cause significant and long-term harm to the environment; - **pollution prevention and control**, where that activity leads to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started; or - **the protection and restoration of biodiversity and ecosystems**, where that activity is: ● significantly detrimental to the good condition and resilience of ecosystems; or ● detrimental to the conservation status of habitats and species, including those of Union interest. **Review:** By 13 July 2022, and subsequently every three years thereafter, the Commission publishes a report on the application of the Regulation. **Platform on Sustainable Finance:** The Commission established a Platform on Sustainable Finance composed inter alia of experts representing civil society, including persons with expertise in the field of environmental, social, labour and governance issues.
Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (The Aarhus Regulation)	The whole text of the Regulation is relevant to integrating environmental protection and for the enjoyment of the procedural rights for the public	The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters by laying down rules to apply the provisions of the Convention to Community institutions and bodies. Art.1(1) of the Regulation
Directive 2001/42/EC on the assessment of the effects of certain	Provisions for integrating environmental protection,	The SEA Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried

plans and programmes on the environment (SEA Directive)	climate and energy: Preamble (9) Art.1 Art.3 (2), lit. a, Art.4(2) Art.5 Art.6 Art.9(1) Annex I.f Annex II.(1)	out at different levels of a hierarchy of plans and programmes (incl. those related to climate and energy). SEA procedures shall be carried out for all plans and programmes, which are prepared for agriculture, forestry, fisheries, **energy**, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive or which, in view of the likely effect on sites, have been determined to require an appropriate assessment. The information to be provided in the SEA report shall encompass the likely significant effects on the environment, including on climatic factors, and the interrelationship between these factors.
	Procedural rights for the public Art. 3 (7) Art.6 (1) and (4) Art.9(1)	Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an SEA are made available to the public. Designated authorities and the public shall be informed and consulted on the draft plan or programme and the SEA report. Member States shall ensure that, when a plan or programme is adopted, the authorities designated for consultations, the public and any Member State consulted through transboundary consultation are informed on the SEA decision.
Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive)	Provisions for integrating environmental protection, climate and energy: Art. 3(1) b Annex I (1-3) and Annex II (2-3) Annex IV (3)	The EIA shall identify, describe and assess the direct and indirect effects of a project on several factors, including on climate. Subject to mandatory EIA or screening EIA procedure are projects related to the energy and climate policy like the energy industry. For projects subject to EIA the developer shall provide information, describing the aspects of the environment likely to be significantly affected by the proposed project, including climatic factors.
	Procedural rights for the public: Preamble (Recitals 16-21) Art. 6(2-6) Art.9	The Directive refers to the right of public participation and to the right to judicial or other procedures for challenging the substantive or procedural legality of EIA decisions, acts or omissions in accordance with Art.6, Art.9(2) and (4) of the Aarhus Convention. The EIA Directive provides for access to information of the public and it should be informed, whether by public notices or by other appropriate means such as electronic media early in the environmental decision-making procedures. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making,

	Art. 11	The competent authorities shall inform the public about the decision to grant or refuse development consent within the EIA procedures, incl. information on the content of the decision and any conditions attached. The Directive required the Member States to ensure access to justice before a court of law or another independent and impartial body for the members of the public concerned that has a sufficient interest, or alternatively, maintains the impairment of a right, where administrative procedural law of a Member State requires this as a precondition. The interest of any non-governmental organisation on-governmental organisations promoting environmental protection and meeting any requirements under national law is deemed sufficient.
Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control (IED Directive)	Provisions for integrating environmental protection, climate and energy Preamble Recital 45 Art.9 (1-2) Art.11 (1) f Annex III.10	The Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the application of Article 37 of that Charter. Where emissions of a greenhouse gas from an IED installation are specified in Annex I to Directive 2003/87/EC in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused. For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site. Among the general principles governing the basic obligations of the operator is the energy efficiency principle and the Member States shall take the necessary measures to provide that installations are operated in accordance with this principle. Among the criteria for determining best available techniques is the consumption and nature of raw materials (including water) used in the process and energy efficiency.
	Procedural rights for the public: Preamble (Recital 27) Art.24 Access to information and	IED refers to the Aarhus Convention stating that the effective public participation in decision-making is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being. The Directive requires that Member States shall ensure that the public concerned are given early and effective opportunities to participate in the permitting procedures, e.g., the granting of a permit for new installations, the granting of a permit for any substantial change. When a decision on

	public participation in the permit procedure Art.25 Access to justice	granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the Internet information about the outcomes of the permit procedures, e.g. the content of the decision, the reasons on which the decision is based. The Directive provides for access to justice and Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions within the permitting procedures when one of the following conditions is met: they have a sufficient interest or they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition. The interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law is deemed sufficient.

Water Framework Directive (WFD) Directive 2000/60/EC establishing a framework for Community action in the field of water policy	Preamble (46) Article 2	The WFD establishes an EU level framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. The purpose of the Directive is to prevent further deterioration and protects and enhances the status of aquatic ecosystems, to protect and improve the aquatic environment through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances. Member States identify the individual river basins lying within their national territory and, for the purposes of this Directive, assign them to individual river basin districts. To ensure the participation of the public including users of water in the establishment and updating of river basin management plans, the WFD requires to provide proper information of planned measures and to report on progress with their implementation with a view to the involvement of the general public before final decisions on the necessary measures are adopted. Member States must encourage the active involvement of all interested parties in the implementation of the WFD, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public. On request, access shall be given to background documents and information used for the development of the draft river basin management plan. The provisions of the WFD on public consultation applies to the update of the river basin management plans as well. River basin management plans must cover a summary of the public information and consultation measures taken, their results and the changes to the plan made consequently.

	Procedural provisions: Article 4(7), (8) Article 14 Annex V, point 1.2.6.(iv) Annex VII, Part A, point 9.	**Procedure for the setting of chemical quality standards by Member States:** In deriving environmental quality standards for pollutants listed in Annex VIII to the WFD, Member States must apply the procedure in Annex V to the setting of a maximum annual average concentration. **The standard derived must be subject to peer review and public consultation.** **Applicability assessment:** Article 4 of the WFD stipulates the environmental objectives. In this regard, the Directive provides that under certain circumstances a Member State may not be in breach of this Directive when it fails to — to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or — to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities. In order to apply the exemption, it must be assessed (applicability assessment) that - all practicable steps have been taken to mitigate the adverse impact on the status of the body of water; - the reasons for the modifications or alterations are specifically set out and explained in the river basin management plan and the objectives are reviewed every six years; - the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the environmental objectives are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and - the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost are achieved by other means, which are a significantly better environmental option. Member States shall ensure that the application of this exemption does not permanently exclude or compromise the achievement of the objectives of the WFD in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation.

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