

Environment & Climate Regulation 2020

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Environment & Climate Regulation 2020

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**Carlos de Miguel Perales, Jesús Andrés Sedano Lorenzo
and Per Hemmer**

Uría Menéndez and Bech-Bruun

Lexology Getting The Deal Through is delighted to publish the fifth edition of *Environment & Climate Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Belgium.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Carlos de Miguel Perales and Jesús Andrés Sedano Lorenzo of Uría Menéndez and Per Hemmer of Bech-Bruun, for their continued assistance with this volume.



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Netherlands

Marinda de Smidt and Marit Raats

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LEGISLATION

Main environmental regulations

1 | What are the main statutes and regulations relating to the environment?

The primary environmental legislation is:

- the Environmental Protection Act;
- the Activities Decree;
- the Environmental Licensing (General Provisions) Bill; and
- the Economic Offences Act.

Furthermore, there are specific laws regarding:

- noise (the Noise Abatement Act);
- soil (the Soil Protection Act);
- nature conservation (the Nature Conservation Act);
- water (the Water Act); and
- agricultural activities (the Ammonia and Livestock Farming Act and the Law on Odour and Livestock).

With the (expected) entry into force of the Environment and Planning Act on 1 January 2021, 26 environmental laws (eg, water, nature conservation, spatial planning) will be replaced and the current environmental legislation will be overhauled.

Integrated pollution prevention and control

2 | Is there a system of integrated control of pollution?

The European integrated pollution and prevention control directives have been implemented in the Environmental Protection Act. Integrated pollution prevention and control (IPPC) installations are regulated through a system of environmental permits with conditions based on best available techniques (BAT) covering the most significant emissions to water, air and soil, as well as other environmental impacts. The definition of IPPC installation is not linked to a specific sector or industry but based on aspects such as energy use and emissions to air.

Soil pollution

3 | What are the main characteristics of the rules applicable to soil pollution?

The Soil Protection Act deals with the protection of the soil, regulates actions that pose a threat to the soil, and sets out how soil pollution must be remediated or managed.

In principle, the polluter is liable for soil pollution irrespective of whether it concerns historic pollution (originating from before 1 January 1987) or new pollution. For historic pollution, a statutory limitation period of 30 years applies (1 January 2017).

Based on the Soil Protection Act and tort, the polluter is liable to the government for costs incurred by the government for soil investigation and remediation.

If the landowner's rights have been adversely affected by the pollution, the polluter's liability to the landowner (or long leaseholder) can be based on tort. The owner can claim for damages for the costs of soil investigation and remediation, as well as for costs arising because their site is less accessible during remediation or other damages relating to their interests as an owner (or long leaseholder). Other variants of liability in the case of soil pollution (eg, damage to health due to working or living on contaminated soil) are also possible.

It is often the case that the polluter cannot be traced. Therefore, the Soil Protection Act provides that current owners or long leaseholders of business parks are liable for historic soil pollution. This means that if the soil must be cleaned up, the competent authorities will address the clean-up decision to the current owner or long leaseholder. The owner or long leaseholder may be able to hold the previous owner or long leaseholder liable under civil law, depending on the contractual arrangements.

The applicable remediation measures vary depending on the type of pollution. In general, there are three types of remediation strategy:

- in situ – where the soil is cleaned at the location;
- on-site – where the soil is removed, cleaned on site and returned; and
- ex situ – where the soil is removed to be cleaned or processed elsewhere.

The possibilities for recovery of remediation costs from a third party (eg, the previous owner or a third-party polluter) depend on the contractual arrangement (if any) between the party that paid for the remediation and the polluter. If there are no contractual arrangements, liability for remediation costs may be based on tort.

Regulation of waste

4 | What types of waste are regulated and how?

The Environmental Protection Act defines 'waste' as all substances, preparations or objects that the holder discards or intends or is required to discard. The definition is in accordance with the EU Waste Framework Directive (2008/98/EC).

The handling of waste is regulated by the Environmental Protection Act. Pursuant to the Act, a national waste management plan must be drawn up. This plan sets out the policy for waste management and waste prevention. Sector plans based on the national waste management plan contain policies relevant for issuing permits for facilities that deal with waste.

The Environmental Law Decree contains a list of waste activities that require a permit, such as certain storage activities. Temporary storage before collection at the place of production does not require a permit.

Transport of waste in the Netherlands must take place through registered transport companies. Transport companies licensed under the Dutch Road Haulage Act automatically satisfy the criteria to be registered, as well as transport companies that are registered in other EU member states or in the European Economic Area when they have a valid community transport licence (EU Regulation 1072/2009/EC). When waste is being disposed of and transported, the quantity and composition of materials are listed and registered at the national waste notification bureau. For the import and export of waste, a notification, permission or permit is required depending on the type of waste under the Environmental Protection Act, which has implemented EU Shipments of Waste Regulation (1013/2006).

The producer must dispose of industrial or hazardous waste through registered disposal agents, which must be registered on the 'VIHB list'. The quantity and composition of waste must be listed and registered at the national waste notification bureau.

Pursuant to the Activities Decree, facilities are required to separate waste as much as reasonably possible. Hazardous waste must always be kept separate from other waste. Facilities with a permit may have specific regulations regarding which waste streams must be separated. The national waste management plan contains policies on waste separation and recycling.

Further, there are various recovery obligations for, among other things:

- e-waste (based on the EU Waste of Electric and Electronic Equipment Directive (2012/19/EU));
- packaging waste (based on the EU Packaging and Packaging Waste Directive (94/62/EC));
- car wrecks; and
- medicines.

Regulation of air emissions

5 | What are the main features of the rules governing air emissions?

Air emissions including the applicable emissions limits are covered by the Activities Decree and environmental permits. The main contaminants are NO_x, SO₂, CO₂ and particulate matter.

Under Dutch law, the emission of pollutants air is regulated separately from the impact of emissions (immissions) on the air quality of the surrounding areas. This latter subject is regulated by the Environmental Protection Act.

Protection of fresh water and seawater

6 | How are fresh water and seawater, and their associated land, protected?

The rules on the protection of water resources, extraction of (ground) water and the discharge of wastewater can be found in:

- the Environmental Licensing (General Provisions) Bill;
- the Environmental Law Decree;
- the Activities Decree;
- the Water Act;
- the Water Quality Requirements and Monitoring Decree;
- the Monitoring Water Framework Directive Regulation;
- the Bathing Establishments and Swimming Facilities (Hygiene and Safety) Act; and
- the Drinking Water Act.

To prevent water pollution, the quality of the water must meet the standards of the European Water Framework Directive. Other European directives (the Groundwater Directive and the Bathing Water Directive) also set standards for the quality of water, as an interpretation or

supplement to the Water Framework Directive. These European directives have been transposed into the Water Quality Requirements and Monitoring Decree, Monitoring Water Framework Directive Regulation, Water Act, Bathing Establishments and Swimming Facilities (Hygiene and Safety) Act.

If an activity has an impact on the quality of water, or if it concerns extraction of groundwater or discharge of wastewater, often a notification or permit is required based on one or more of the above-named regulations.

The national government monitors the water along the coast and on the large lakes, rivers and canals. The water boards monitor the regional waters. The province monitors the quality of the groundwater. The level of harmful substances in the water (the chemical quality) is monitored. The applicable European standards are set out in the Priority Substances Directive and the Groundwater Directive. Also the water temperature and the presence of nutrients, plants and animals (the ecological quality) is monitored. The applicable European standards vary per type of water (ditch, lake, river, coastal water) and are set out in the Monitoring Water Framework Directive Regulation. In bathing locations the bacteria, excrement, and presence of waste and blue algae in the water are also monitored.

Protection of natural spaces and landscapes

7 | What are the main features of the rules protecting natural spaces and landscapes?

The Nature Conservation Act protects biodiversity and EU and national nature conservation areas. The Act is based on the EU Conservation of Natural Habitats and Wild Fauna and Flora Directive (92/43/EEC) and the EU Conservation of Wild Birds Directive (2009/147/EC). The provincial executives are usually the competent authorities.

The protection and designation of national nature conservation areas – mainly, the Netherlands Nature Network – are also laid out in national and provincial policy, regulations and local zoning plans.

Protection of flora and fauna species

8 | What are the main features of the rules protecting flora and fauna species?

The Nature Conservation Act protects biodiversity. The Act is based on the EU Conservation of Natural Habitats and Wild Fauna and Flora Directive (92/43/EEC) and the EU Conservation of Wild Birds Directive (2009/147/EC). The provincial executives are usually the competent authorities.

There are three categories of protected species: birds, other species that are protected under EU regulation, and species that are protected based on Dutch regulation.

Any activity that disturbs, harms or destroys protected species is prohibited unless an exemption applies or specific permission is granted. Often, activities potentially harming protected species can be allowed by adopting a protocol regulating the timing of the (building) activities taking into account breeding seasons.

Noise, odours and vibrations

9 | What are the main features of the rules governing noise, odours and vibrations?

Noise

The Noise Pollution Act regulates noise levels for businesses in industrial areas. The Activities Decree lays down general environmental rules on noise for commercial operations located elsewhere. Businesses that comply with the Decree do not usually need to apply for an environmental permit.

Near buildings, the noise from road traffic, businesses and other sources may not normally exceed certain levels, or 'preferred limit values'. These may only be exceeded if an official exemption is granted. There are also firm maximum limits for noise, or 'maximum exemption values'. Houses may not be exposed to noise levels exceeding these values, other than in very exceptional cases. Both types of limit value vary from one source and situation to another.

Decisions on exemptions from noise limit values are usually made by the municipal authorities. If the source of the noise is not confined to any particular municipality (as in the case of a provincial or national road), the decision is made by the provincial or central government. Central government is responsible for national roads, railways, certain Ministry of Defence sites and major airports.

Odour

Odour is regulated in the Activities Decree. Based on this Decree a company must meet an acceptable level of odour nuisance. The competent authority determines whether this level is being met (in that specific situation). In principle, the level is met when a company takes measures as stated in the Activities Regulation, as the rules impose measures and not specific levels of odour.

To guarantee an acceptable nuisance level, the competent authority can state additional requirements in policies and permits (eg, odour load, odour emission or other measures). For particular establishments (types A-C), specific rules also apply. Establishments subject to a permit must apply the best available techniques (BAT) for reducing odour emissions. Furthermore, specific legislation applies to livestock farms.

Vibration

Vibration in relation to spatial planning is regulated through the general rule in article 3.1 of the Spatial Planning Act. To ensure balanced spatial planning, it is necessary to identify potential nuisance by vibration and to include this in the assessment of spatial plans such as zoning plans.

There are also guidelines regarding acceptable levels of vibrations caused by, for example, use of (rail) roads and other activities that help the competent authority to set levels in environmental permits. However, there is no formal legislation for preventing nuisance or damage due to vibrations.

Liability for damage to the environment

10 | Is there a general regime on liability for environmental damage?

According to the EU Environmental Liability Directive (2004/35/EC), which is implemented in the Environmental Protection Act, the starting point in the case of environmental damage is that the polluter causing environmental damage is liable and must take the necessary preventive or remedial action and bear all the related costs.

In the case of environmental damage, multiple types of liability can arise. Environmental damage could lead to administrative sanctions, criminal prosecution or in some cases civil action (based on tort or breach of contract).

Environmental taxes

11 | Is there any type of environmental tax?

The government taxes the use of mains water and the use of electricity and natural gas. The waste disposal charge applies to waste that goes to a landfill or is incinerated, for which the waste treatment operator must pay the charges. There is no charge on waste that is recycled. Companies that use coal and coal importers pay coal tax; although, in certain cases an exemption is possible.

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities

12 | Are there specific rules governing hazardous activities?

Companies with a high risk of serious accidents involving hazardous substances must comply with the Major Accidents (Risks) Decree. This requires such companies to implement specific safety precautions including training and disaster response plans.

Furthermore, the Installations (Public Safety) Decree and the External Safety (Establishments) Decree include rules about distances between these high-risk businesses or locations and 'sensitive objects'. For example, chemical plants and petrol stations that store large quantities of hazardous substances may not be located close to a residential area or near a hospital or school.

Further to the Working Conditions Act, employees need to be able to work safely and healthily and must be protected against possible risks and negative effects of their work environment. The Working Conditions Act forms the base and contains general provisions (target requirements) that apply to all places where work is performed. The Working Conditions Decree provides detailed regulation (eg, countering occupational hazards such as working with hazardous substances or working at heights).

Transport of hazardous substances via road or water is regulated in the Dangerous Goods Transport Act and the External Safety Decree on transport routes. This regulation links to a Base Transport Network identifying available transport itineraries for hazardous materials.

Regulation of hazardous products and substances

13 | What are the main features of the rules governing hazardous products and substances?

The Environmental Protection Act applies to the handling and disposal of hazardous materials or waste. Further, the sector plans based on the national waste management plan contain regulations regarding the treatment of hazardous waste, among other things.

The producer must dispose of hazardous materials or waste through registered disposal agents and registered transportation companies (VHIB list). Hazardous waste must be separated from other waste.

The quantity and composition of the hazardous waste that is disposed of and transported must be listed and registered at the national waste notification bureau.

Industrial accidents

14 | What are the regulatory requirements regarding the prevention of industrial accidents?

Industrial accidents are prevented in many ways, among other things by setting rules regarding storage, working conditions of employees, safety distances, health and safety plan, etc.

Companies with a high risk of serious accidents involving hazardous substances must comply with the Major Accidents (Risks) Decree. This requires such companies to implement specific safety precautions including training and disaster response plans.

Furthermore, the Installations (Public Safety) Decree and the External Safety (Establishments) Decree include rules about distances between these high-risk businesses or locations and 'sensitive objects'. For example, chemical plants and petrol stations that store large quantities of hazardous substances may not be located close to a residential area or near a hospital or school.

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ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT

Environmental aspects in M&A transactions

15 | What are the main environmental aspects to consider in M&A transactions?

The main aspects to consider in all M&A transactions – share deals or asset deals – are the scope and the validity of environmental permits, presence of asbestos or soil contamination, (impending) enforcement decisions and possibly required sustainability requirements and certificates.

In the case of an acquisition of assets it is important to identify when and how necessary permits can be transferred to the new permit holder. For environmental permits (including building permits) this is a fairly simple process of a name change. However, in the case of 'personal' permits specifically granted to a legal or natural person (eg, a nuclear energy permit), this may take some time and effort.

Environmental aspects in other transactions

16 | What are the main environmental aspects to consider in other transactions?

The main aspects to consider are the scope and the validity of environmental permits, transferability of permits, presence of asbestos or soil contamination, (impending) enforcement decisions and possibly required sustainability requirements and certificates.

In real estate transactions, energy performance certificates (EPCs) are mandatory when homes and other buildings are put up for sale or rent or when construction is completed. The EPC shows how energy-efficient homes, offices and hospitals are. They also suggest possible energy-saving measures.

Environmental aspects in public procurement

17 | Is environmental protection taken into consideration by public procurement regulations?

Environmental protection can be included as a criterion for awarding a contract. A well-known example is a tender for public transport concessions with certain emission requirements for vehicles. Another example is tenders for buildings and other equipment with certain emission or energy efficiency requirements.

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment

18 | Which types of activities are subject to environmental assessment?

The Environmental Impact Reporting Decree specifically sets out the projects that require an environmental impact assessment (the 'C list').

The Decree also sets out the projects that require a preliminary assessment to determine whether a proper environmental impact assessment must be drawn up (the 'D list').

Even if the criteria in the D list are not met, a basic pre-assessment must still be performed to check whether the project has important

adverse consequences for the environment and whether it requires an environmental impact assessment.

Environmental assessment process

19 | What are the main steps of the environmental assessment process?

According to the Environmental Protection Act there is an extensive and a limited environmental impact assessment procedure (EIA procedure). The Environmental Impact Reporting Decree sets out whether the EIA procedure must be followed.

The extensive EIA procedure applies to plans (eg, zoning plan) and complex decisions. The extended procedure starts with a written notification from the initiator to the competent authority. The competent authority will publicly announce the intention to start an activity to which the EIA procedure applies. The environmental impact assessment (EIA) is prepared by the competent authority (for plans) or by the initiator (for other activities). The competent authority will always consult advisers and other administrative bodies about the scope and level of detail of the EIA to be drawn up. When the EIA is drawn up (there is no set period) the competent authority will make it public. Everyone can then submit an opinion (period as stated for the specific plan or decision). In the extensive EIA procedure the competent authority will also seek advice on the EIA from the Netherlands Commission for Environmental Assessment (NCEA). The plan or decision is only adopted when the EIA procedure is completed correctly and the final plan or decision can reasonably be based on the EIA. This could be followed by objection and appeal as stated for the specific plan or decision. When adopted the competent authority must examine the actual environmental impact of the implementation of the proposed activity.

In the limited EIA procedure the competent authority will only advise the initiator if requested, or on its own initiative. Also, advice from the NCEA is not required.

REGULATORY AUTHORITIES

Regulatory authorities

20 | Which authorities are responsible for the environment and what is the scope of each regulator's authority?

Different supervisory authorities regulate compliance with environmental legislation. This diversification is based on the applicable environmental laws and regulations.

The Human Environment and Transport Inspectorate, which is part of the Ministry of Infrastructure and Water Management, is an important supervisory authority. The inspectorate deals with compliance issues regarding:

- drinking water;
- the use of hazardous substances;
- environmental industries;
- waste processing; and
- the prevention and clean-up of contaminated soil and water.

The provincial executive is the competent authority regarding compliance with environmental permits of complex industrial facilities in its jurisdiction (ie, facilities that have an Integrated Pollution Prevention and Control installation or an Industrial Emissions Directive Annex I Category 4 installation, or that are regulated by the Prevention of Major Accidents Decree). The provincial executive also regulates compliance with nature conservation regulations and permits.

The mayor and aldermen regulate compliance with environmental permits for facilities other than those supervised by the provincial executive. A large number of facilities need not have an environmental

permit but must comply with the general rules for facilities as laid out in the Activities Decree.

The powers of the provincial executive and the mayor and aldermen have been mandated to organisations in which specialist civil servants deal with issuing permits, supervision and enforcement.

Water boards are the competent authorities regarding compliance with the water board regulations.

The extent of the powers of these government bodies can be split into supervisory powers and law enforcement powers.

There are three categories of administrative law enforcement measures:

- executive sanctions;
- reparatory sanctions; and
- punitive sanctions.

One example of an executive sanction is the repeal of a permit. Reparatory sanctions include penalty payment orders and executive enforcement orders. A reparatory sanction gives the offender a grace period in which to end the offence. If the offence has not ended in time, the offender must pay a penalty if there is a penalty payment order. Under an executive enforcement order, the competent authority will end the offence (eg, clean up soil pollution) at the cost of the offender. One example of a punitive sanction is a penalty.

Further, if the offence qualifies as an economic offence as defined in the Economic Offences Act, the offender may face criminal prosecution resulting in penalties or imprisonment.

Permits

Under the Environmental Licensing (General Provisions) Bill, in most cases the mayor and aldermen of municipalities are the competent authorities to issue environmental permits.

In the case of complex industrial facilities (ie, facilities that have an Integrated Pollution Prevention and Control installation or Industrial Emissions Directive Annex I Category 4 installation, or are regulated by the Prevention of Major Accidents Decree), the provincial executive issues the permits.

In the case of certain military complexes, the Minister of Infrastructure and Water Management issues the permits.

For mining facilities, the Minister of Economic Affairs and Climate is the competent authority.

Investigation

21 | What are the typical steps in an investigation?

Supervisory powers include the power to:

- access a facility (without the owner or user's permission) and search cars or trucks;
- demand and copy information on (permitted) activities;
- take samples; and
- open packaged goods.

These powers of investigation can sometimes be challenged.

Administrative decisions

22 | What is the procedure for making administrative decisions?

For many environmentally relevant activities a decision (permit) is not required. Instead, these facilities are regulated by the general rules of the Activities Decree. Depending on the type of activity, a notification of starting a new activity or changing an activity may be required.

The application procedure for administrative decisions is based on the procedural rules of the General Administrative Law Act and the

Environmental Licensing (General Provisions) Bill. There are two types of procedure:

- the standard procedure; and
- the uniform public procedure.

The standard procedure applies to administrative decisions for activities with a limited environmental assessment. This type of procedure has a handling term for the competent authority of a maximum of 14 weeks (eight weeks with an option to extend once within six weeks). After the permit has been issued or refused, an interested party can object to the decision or the refusal by initiating objection proceedings with the competent authorities. After the objection proceedings, the decision can be challenged in the district court followed by appeal proceedings at the Administrative Jurisdiction Division of the Council of State.

The uniform public procedure applies to most permits for facilities with environmentally relevant activities. This procedure starts with the filing of the application followed by the draft permit (or refusal) and the possibility for interested parties to share their views on the draft permit. The competent authorities will consider the views and issue a final decision on the application. The handling term from the filing of the complete application to the decision on the application is a maximum of 32 weeks (26 weeks plus a six-week extension). This decision can be directly challenged at the district court followed by appeal proceedings at the Administrative Jurisdiction Division of the Council of State.

Applicants can file an application for an environmental permit at the environment and planning (electronic) counter by uploading all the relevant information. The environment and planning (electronic) counter forwards this information to the permit-issuing authority. The applicant will also receive the decision via this counter.

Sanctions and remedies

23 | What are the sanctions and remedies that may be imposed by the regulator for violations?

Violations of permit rules or decisions will result in administrative law enforcement by the competent authority (usually the mayor and aldermen of the municipality).

There are three categories of administrative law enforcement measures:

- executive sanctions;
- reparatory sanctions; and
- punitive sanctions.

One example of an executive sanction is the repeal of a permit. Reparatory sanctions include penalty payment orders and executive enforcement orders. A reparatory sanction gives the offender a grace period in which to end the offence. If the offence has not ended in time, the offender must pay a penalty if there is a penalty payment order. Under an executive enforcement order, the competent authority will end the offence (eg, clean up soil pollution) at the cost of the offender. One example of a punitive sanction is a penalty.

Further, if the offence qualifies as an economic offence as defined in the Economic Offences Act, the offender may face criminal prosecution resulting in penalties or imprisonment.

Appeal of regulators' decisions

24 | To what extent may decisions of the regulators be appealed, and to whom?

There are two types of procedure:

- the standard procedure; and
- the uniform public procedure.

The standard procedure applies to permits for activities with a limited environmental assessment. After the permit has been issued or refused, an interested party can object to the permit or refusal by initiating objection proceedings with the competent authorities. After the objection proceedings, the decision can be challenged in the district court followed by appeal proceedings at the Administrative Jurisdiction Division of the Council of State.

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JUDICIAL PROCEEDINGS

Judicial proceedings

25 | Are environmental law proceedings in court civil, criminal or both?

Proceedings regarding environmental law are usually conducted in the administrative court.

In the case of environmental damage, multiple types of liability can arise. Environmental damage could lead to administrative sanctions, criminal prosecution or in some cases civil action (based on tort or breach of contract).

Powers of courts

26 | What are the powers of courts in relation to infringements of environmental law?

The administrative court can decide to annul or to sanction a challenged decision; this includes decisions to impose an administrative sanction. In the event of annulment, the administrative court can sometimes also to decide the case itself.

In the case of environmental damage, the civil court can decide on claims for damages or measures to act or stop acting. In the case of criminal prosecution, the criminal court can decide on the question of guilt and impose a sanction.

Civil claims

27 | Are civil claims allowed regarding infringements of environmental law?

Civil claims regarding infringements of environmental law are allowed in case of damages (non-contractual tort) or breach of contract.

Defences and indemnities

28 | What defences or indemnities are available?

The following optional defences are available to environmental offenders:

- the violation was not determined in the right manner;
- the subject rule is not applicable to the alleged action;
- it is not possible to attribute the violation to the suspect (eg, in case of lack of proof); and
- there was no adverse effect on the environment.

In administrative cases in general the possible defences are, among other things, the case is inadmissible, to claim the nullification, that there is no offence, or the action is in accordance with the applicable

rules. In the case of a wrongful decision, compensation can be claimed from the administrative body that has taken the initial decision.

In civil cases in general the possible defences are, among other things, that there is no unlawful action, there is no shortcoming, to invoke prescription, limitation or an expiry period, or that the counterparty or third party is liable (joint, several or strict liability).

In criminal cases in general the possible defences are, among other things, that there is no offence, or intent or guilt (depending on the crime or violation).

Directors' or officers' defences

29 | Are there specific defences in the case of directors' or officers' liability?

Directors and officers can be held personally liable for company environmental offences depending on their particular involvement in the case. However, financial damage on the basis of director or officer liability can often be insured. Insuring the financial damage will not prevent the competent authority, a public prosecutor or a third party from seeking compensation for the damages from the director or officer.

Appeal process

30 | What is the appeal process from trials?

Proceedings at the administrative district court can be followed by appeal proceedings at the Administrative Jurisdiction Division of the Council of State. The exceptions are listed in the General Administrative Law Act (Appendix 2).

Proceedings at the civil and criminal district court can be followed by appeal proceedings at the Court of Appeal. In civil matters, criminal and tax cases it is possible to lodge an appeal with the Supreme Court. The Supreme Court only checks the legal quality of contested judgments given by the courts of appeal as regards both the application of law and the legal reasoning behind it.

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

31 | Is your country a contracting state to any international environmental treaties, or similar agreements?

The Netherlands is a signatory to many international treaties, including:

- the 1992 UN Framework Convention on Climate Change;
- the Kyoto Protocol (1997);
- the Paris Climate United Nations Framework Convention on Climate Change Agreement (2015);
- the Paris Agreement (which will enter into force in 2020);
- the United Nations Environment Programme;
- the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998);
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989);
- the Convention for the Protection of the Marine Environment of the North-East Atlantic (1992);
- the International Convention for the Prevention of Pollution from Ships; and
- the Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979).

As the Netherlands is an EU member state, all EU environmental regulations are binding in their entirety and directly applicable in the

Netherlands. The Netherlands must also transpose EU directives into national law.

International treaties and regulatory policy

32 | To what extent is regulatory policy affected by these treaties?

Treaties are binding for the state, and will sometimes apply directly for people and companies in the Netherlands. The national legislation must be consistent with the treaties. If not the Netherlands will amend its laws in line with treaties and EU legislation.

UPDATE AND TRENDS

Key developments of the past year

33 | Are there any emerging trends or hot topics in environment law in your jurisdiction?

Environment and Planning Act

The Environment and Planning Act is expected to enter into force on 1 January 2021. The Act will incorporate 26 laws on the environment, water, nature conservation, spatial planning and land policy and will overhaul the current environmental legislation.

Nitrogen Approach Programme

On 29 May 2019 the Administrative Jurisdiction Division of the Council of State ruled that the Dutch Nitrogen Approach Programme can no longer be used as a basis for permission for environmental activities (ECLI:NL:RVS:2019:1603 and ECLI:NL:RVS:2019:1604). According to the Council of State, the appropriate assessment that formed the basis for the Nitrogen Approach Programme is contrary to the European Habitats Directive. The decision of the Council of State has major consequences for granting permission and permits and for the activities that were exempted from the permit requirement with the Nitrogen Approach Programme.

For new plans or plans in the making, research into the ecological consequences and the deposition of nitrogen in Natura 2000 areas in particular must (yet) be carried out. If necessary, a nature permit must be applied for (possibly as part of the environmental permit). Plans and projects based on the appropriate assessment in appeal will, in principle, be cancelled. An irrevocable permit based on the appropriate assessment continues to be granted. The first plans and projects have been suspended due to the Council of State ruling. The national government is currently investigating legal solutions.

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