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Dr. Angelika Kallia - Antoniou

Attorney at Law, ML International Law, PhD European Environmental Law

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EU policy for protection of fundamental rights and environment in the age of climate crisis

Dr. Angelika Kallia - Antoniou, Attorney at Law, ML International Law, PhD European Environmental Law

The present climate crisis is posing disasters on ecosystems, people, and economies in all regions of the European Union, affecting most the vulnerable societies. The EU had to adapt accordingly the policy and legislation. We present the recent significant changes regarding environmental protection and fundamental human rights, as well as the related financial measures.

1. Problems and Challenges - Respond of the EU, the UN and the Council of Europe

Environmental degradation and climate crisis pose an increasing danger to the life and welfare of all citizens and notably to vulnerable societies.

The UN Human Rights Council (UNHRC), in its Resolution of 8 October 2021, recognized that access to a healthy and sustainable environment is a universal right (1).

The Council of Europe adopted a Recommendation in September 2022, on human rights and the protection of the environment, calling its 46 Member States to establish at the national level, the right to a clean, healthy and sustainable environment as a human right (2).

The UN General Assembly (UNGA), in 2022, adopted a Resolution recognizing the human right to a clean, healthy, and sustainable environment (3).

EU, responding to climate change and environmental degradation, adopted the "Green Deal" in 2019 and the "Climate Law" in 2021, adapting all European policies and EU legislation to confront the new challenges.

Despite the importance of healthy and resilient ecosystems for our well-being and prosperity, Europe's nature is in alarming decline, with more than 80% of habitats in poor condition. Wetlands, peatlands, grasslands, and dune habitats are the worst affected.

Since 1970, wetlands in Western, Central, and Eastern Europe have shrunk by 50%, while 71% of fish populations and 60% of amphibian populations have declined over the last decade. Biodiversity loss accounted for an estimated annual loss of €3.5-18.5 trillion between 1997 and 2011.

Climate change is expected to have major impact on ecosystems, people, and economies in all regions of the European Union (EU), such as extreme heat, floods, droughts, water scarcity, rise of sea level, thawing glaciers, forest fires, windthrows and agricultural losses.

The impact of climate change events may disproportionately affect the most vulnerable citizens in our societies. Recent

data from the Fundamental Rights Agency (FRA) shows that 23% of Roma in the EU live disproportionately more often in areas facing environmental problems such as pollution, grime, smoke, dust, unpleasant smells, or polluted water, compared to the general population (14%).

Building a Union of equality, with a fairer and inclusive society, free of any discrimination, is an EU priority. The EU has enacted secondary law providing protection against discrimination, such as the Racial Equality Directive and Employment Equality Directive, which have been transposed into national laws by all 27 EU Member States.

The EU Charter for Fundamental Rights and the Agency for Fundamental Rights

Environmental protection and the improvement of the quality of the environment "must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development" according to Article 37 of the EU Charter for Fundamental Rights (4).

The European Union Agency for Fundamental Rights founded as an independent body in 2007 (Founding Regulation 168/2007, amended in April 2022) aims to instill a fundamental rights culture across Europe and to bring the Charter of Fundamental Rights to life for everyone (5).

In 2023, the European Union Fundamental Rights Agency (FRA), aiming to "ensure the right to environmental protection", set up the project to identify the most urgent social and fundamental rights dimensions of the EU's green transition and climate change, in the spirit of the principle of the United Nations Sustainable Development Agenda to "leave no citizen behind".

In parallel FRA adopted a strategic plan for the years 2023-2028 and a Communication Strategy covering also the years 2023-2028.

3. The EU Treaties

Environmental integration was first introduced in EU law by the Single European Act in 1986. The Treaty of Amsterdam, 1997, upgraded environmental integration to a general principle of EU law. Article 3(3) of the Treaty on European Union (TEU) provides that the EU 'shall work', inter alia, for a 'high level of protection and improvement of the quality of the environment'. Sustainable development is an overarching objective for the EU, which is committed to a 'high level of protection and improvement of the quality of the environment' (6). EU environment policy is based on Articles 11 and 191-193 of

the Treaty on the Functioning of the European Union (TFEU). Under Article 11 (TFEU), environmental protection requirements must be integrated into the implementation of the Un-

ion's policies and activities, particularly with a view to promoting sustainable development (7).

Article 191 (TFEU) established four objectives for EU environmental policy, namely: 'preserving, protecting and improving the quality of the environment', 'protecting human health', 'ensuring the prudent and rational utilization of natural resources', and 'promoting measures at the international level to deal with regional or worldwide environmental problems, particularly combating climate change".

Article 191(2) (TFEU) laid down principles to guide law-making and interpretation, namely: high level of environmental protection, precaution, prevention, rectification at source, and the polluter pays.

4. The EU Legislation on the Environment

EU environmental law includes issues ranging from climate change to biodiversity, water, air pollution, noise, dangerous substances, genetically modified organisms, waste, nuclear safety, as well as horizontal measures on environmental assessments, integrated pollution prevention and control, integrated product policy, and environmental liability.

About 80-85% of environmental law implemented in the Member States is of EU origin. Additionally, several parts of EU legislation, other than environmental legislation, may be considered as falling within the scope of application of Article 37, as they have implemented, to different degrees, the principle of environmental integration, with the most prominent examples found in the areas of the Common Agricultural Policy, the Common Fisheries Policy, Transport, Energy, and External policies.

Rights which citizens can invoke to protect the environment arise from the EU environmental legislation namely:

- a) Complaint to the European Commission
- b) Petition to the European Parliament
- c) Recourse to the Court of Justice of the EU
- d) Reporting to the European Ombudsman concerning maladministration in environmental matters.
- e) access to environmental information: According to the Aarhus Convention (8), which is part of the EU acquis, citizens have "the right to a clean and healthy environment" and also have "access to environmental information, access to justice, and the right to participate in environmental decision-making".

Public participation is also foreseen under the Espoo Convention (Environmental Impact Assessment in a Transboundary context) (9) and the Strategic Environmental Assessment (SEA) Protocol (10).

Adapting EU Policies and Legislation in the Face of New Challenges: Towards the Implementation of the Green Deal and the Climate Law

5.1. The European Green Deal

The European Commission, in its communication of 11 December 2019 entitled 'The European Green Deal', sets out a new growth strategy that aims to transform the Union into a fair and prosperous society with a modern, resource-efficient,

and competitive economy, where there are no net emissions of greenhouse gases in 2050 (11). The European Green Deal also aims to protect, conserve and enhance the Union's natural capital, and to protect the health and well-being of citizens from environment-related risks and impacts. At the same time, the E. Commission declares that this transition must be just and inclusive, leaving no one behind. EU policies and legislation are under transformation, and the EU is working to take all appropriate measures to:

- Become climate neutral by 2050
- Protect human life, animals, and plants by cutting pollution
- Help companies to become world leaders in clean products and technologies
- · Help to ensure a just and inclusive transition

One third of the €1.8 trillion investments from the Next Generation EU Recovery Plan and the EU's seven-year budget will finance the European Green Deal.

The European Green Deal will improve the well-being and health of citizens and future generations by providing:

- Fresh air, clean water, healthy soil, and biodiversity
- Renovated, energy-efficient buildings
- · Healthy and affordable food
- More public transport
- Cleaner energy and cutting-edge clean technological innovation
- Longer-lasting products that can be repaired, recycled, and reused
- Future-proof jobs and skills training for the transition
- Globally competitive and resilient industry

Specific Goals:

- Climate: Becoming the first climate-neutral continent by 2050.
- Energy: A clean and efficient energy transition.
- Environment and Oceans: Protecting our biodiversity and ecosystems.
- Agriculture: A healthy food system for people and the planet.
- Transport: Providing efficient, safe, and environmentally friendly transport.
- Industry: An industrial strategy for a competitive, green, and digital Europe.
- Research and Innovation: Its role in driving transformative change.
- Finance and Regional Development: Sustainable investments to deliver the European Green Deal.
- EU Emissions: Laws adopted on 25 April 2023 as part of the 'Fit for 55' package, which sets the EU's policies in line with its commitment to reduce its net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels and to achieve climate neutrality by 2050.

Digital transformation, technological innovation, and research and development are important drivers for achieving the climate-neutrality objective. The transition to climate neutrality requires changes across the entire policy spectrum and a collective effort of all sectors of the economy and society.

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Sustainable and Smart Mobility Strategy

The European Commission adopted on 9 December 2020 a communication entitled 'Sustainable and Smart Mobility Strategy - Putting European Transport on Track for the Future' (12). The strategy sets out a roadmap for a sustainable and smart future for European transport, with an action plan towards an objective to deliver a 90% reduction in emissions from the transport sector by 2050.

European Food Systems and Farming Including a New Soil Law

The European Commission adopted on 5 July 2023 a package of measures for the sustainable use of key natural resources, which will also strengthen the resilience of European food systems and farming (13). The package includes a new soil law, which will help have healthy soils in the EU by 2050, a regulation on plants produced by genome techniques, and measures to reduce food and textile waste.

Healthy soils are an essential factor towards strengthening resilience to natural disasters, such as floods and droughts, that we see affect Europe more and more each year and that have become an alarming concern across the EU. Healthy soils also help to achieve climate neutrality and zero pollution, revert biodiversity loss, and halt desertification. Up to 70% of our soils are in poor condition. Many soils have been severely damaged by chemical pesticides and the overuse of nutrients, 83% of them now contain pesticide residues. Our industrial pollution has also left us a legacy of over 3 million potentially contaminated sites across the EU, which pose a huge risk not only to the environment but also to our and our children's health. This is costing our economy more than 50 billion euros every year. On top of that, droughts now cost us around 9 billion euros every year. Healthy soils are natural water reservoirs. But when soil quality falls, the moisture content falls as well. That has led to a situation where desertification is now a real threat in several Member States.

EU Emissions Trading System (ETS)

The EU Emissions Trading System (ETS) (14) is a carbon market based on a system of cap-and-trade of emissions allowances for energy-intensive industries, the power generation sector, and the aviation sector . The new rules increase the overall ambition of emissions reductions by 2030 in the sectors covered by the EU ETS to 62% compared to 2005 levels.

Maritime Transport Emissions

Emissions from shipping are included within the scope of the EU ETS for the first time in 2024. Obligations for shipping companies to surrender allowances will be introduced gradually: 40% for verified emissions from 2024, 70% from 2025, and 100% from 2026.

Buildings, Road Transport, and Additional Sectors

A new, separate emissions trading system for buildings, road transport, and additional sectors (mainly small industry) has been established to ensure cost-efficient emissions reductions in these sectors, which have thus far proven difficult to decarbonize. The new system will apply to distributors that supply fuels to the buildings, road transport, and additional sectors from 2027.

Emissions from Aviation

Free emission allowances for the aviation sector will be gradually phased out, with full auctioning implemented from 2026. Until 31 December 2030, 20 million allowances will be reserved to incentivize the transition of aircraft operators from the use of fossil fuels.

The EU ETS will apply for intra-European flights (including departing flights to the United Kingdom and Switzerland), while CORSIA (UN Carbon Offsetting and Reduction Scheme for International Aviation) (15) will apply to extra-European flights to and from third countries participating in CORSIA from 2022 to 2027. Transparency on aircraft operators' emissions and offsetting will also be improved, and a monitoring, reporting, and verification framework for non-CO2 aviation effects will be set up. By 1 January 2028, building on the results of that framework, the Commission will propose, where appropriate, mitigation measures for non-CO2 aviation effects.

The Carbon Border Adjustment Mechanism (CBAM)

The Carbon Border Adjustment Mechanism (CBAM) (16) concerns imports of products in carbon-intensive industries. The objective of CBAM is to prevent - in full compliance with international trade rules - that the greenhouse gas emissions reduction efforts of the EU are offset by increasing emissions outside its borders through the relocation of production to countries where policies applied to fight climate change are less ambitious than those of the EU or increased imports of carbon-intensive products. Until the end of 2025, the CBAM will apply only as a reporting obligation. CBAM will be phased in gradually, in parallel to the phasing out of free allowances, once it begins under the revised EU ETS for the sectors concerned. Free allowances for sectors covered by the Carbon Border Adjustment Mechanism - cement, aluminium, fertilizers, electric energy production, hydrogen, iron, and steel, as well as some precursors and a limited number of downstream products - will be phased out over a nine-year period between 2026 and 2034.

The Social Climate Fund

The Social Climate Fund (17) will be used by member states to finance measures and investments to support vulnerable households, micro-enterprises, and transport users and help them cope with the price impacts of an emissions trading system for buildings, road transport, and additional sectors. Funding will be provided by revenues mainly from the new emissions trading system up to a maximum amount of EUR 65 billion, to be supplemented by national contributions. It is established temporarily over the period 2026-2032.

5.2. The Climate Law

The Intergovernmental Panel on Climate Change (IPCC) (18) provides, in its 2018 Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, a strong scientific basis for tackling climate change. The aim of the IPCC is to strengthen the global response to the threat of climate change, by promoting sustainable development and eradicating poverty, illustrating the need to rapidly step up climate action and to continue the transition to a climate-neutral economy. IPCC confirms that greenhouse gas emissions need to be urgently reduced and that climate change needs to be limited to 1.5°C.

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) (19) has shown in its 2019 Global Assessment Report on Biodiversity and Ecosystem Services, a worldwide erosion of biodiversity, with climate change as the third most important driver of biodiversity loss. Climate change, as a trans-boundary problem, cannot be solved by national or local action alone. Coordination of climate action must be taken at the European level and at the global level. The Union is a global leader in the transition towards climate neutrality. Since 1992, the European Union has worked to develop joint solutions and drive forward global action to tackle climate change.

Action at the EU level will provide for cost-effective delivery of the 2030 and long-term emission reduction objectives, while ensuring fairness and environmental integrity.

Regulation (EU) 2021/1119, the so-called European Climate Law (20), establishes the framework for achieving climate neutrality. The need to consider the social, economic, and environmental impacts of the green and energy transition is stressed. The EU has introduced a considerable number of measures to implement its environmental policy and has been developing climate policy and strategies to ensure the effective implementation of the Paris Agreement and the EU's Emissions Trading System. The EU is also fully committed to the implementation of the 2030 Agenda for Sustainable Development and to the commitments of the Paris Agreement on climate change (21). The EU Multiannual Financial Framework (MFF) (22) resources for 2021-2027 provides 30% of the recourses to measures to support environmental sustainability and to combat climate change. In order to ensure that the green transition will be fair and just, the E. Commission has adopted additional targeted funding tools to achieve a more Social Europe. In this context, a new Social Climate Fund will be launched in 2026 to support vulnerable people and mitigate the costs for those most exposed to fossil fuel price increases. The European Climate Law sets out the binding Union 2030 climate target for a domestic reduction of net greenhouse gas emissions by at least 55% compared to 1990 levels by 2030.

It is necessary to address the growing climate-related risks to health, including more frequent and intense heatwaves, wildfires, and floods, food and water safety and security threats, and the emergence and spread of infectious diseases. As announced in its communication of 24 February 2021 entitled 'Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change', the E. Commission has launched a European climate and health observatory under the European Climate Adaptation Platform Climate-ADAPT, to better understand, anticipate and minimize the health threats caused by climate change.

The EU includes the LULUCF (Land Use, Land-Use Change, and Forestry) Regulation (2018/1999) (23) in the climate policy framework. The actions taken by Member States under the LULUCF Regulation framework have strong linkages with other policies, in particular agriculture, biodiversity and habitat protection, adaptation, and also energy policy due to the renewable energy aspects. Interdependencies between the different policies involved, have a cross-national impact, emissions reduction. Removal targets are determined per Member State, and principles, on which basis the Member States will report on their achievements and measure their progress towards reaching their individual targets.

The Regulation respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union, in particular Article 37. Climate action should be an opportunity for all sectors of the economy in the Union to help secure industry leadership in global innovation. Driven by the E. Union's regulatory framework and efforts made by industry, it is possible to decouple economic growth from greenhouse gas emissions. For example, E. Union greenhouse gas emissions were reduced by 24% between 1990 and 2019, while the economy grew by 60% over the same period. Without prejudice to binding legislation and other initiatives adopted at the E. Union level, all sectors of the economy - including energy, industry, transport, heating and cooling, and buildings, agriculture, waste, and land use, land-use change and forestry, irrespective of whether those sectors are covered by the system for greenhouse gas emission allowance trading within the Union ('EU ETS') - should play a role in contributing to the achievement of climate neutrality within the Union by 2050.

5.3. Fundamental Rights in the context of the EU's Green Deal

The European Commission, aiming to secure a greener and fairer Europe, provides support to Member States that have identified the territories expected to be most negatively impacted by the transition towards climate neutrality via the Just Transition Fund (JTF). The JTF aims to reduce the social and economic costs resulting from the transition to the EU's 2030 climate target and the EU climate-neutral economy by 2050. The European Pillar of Social Rights Action Plan aims to ensure that the transition to climate neutrality, digitalization, and demographic change is socially fair and just, making the European Green Deal a success for all Europeans. The European Union provides funding for projects and programs in various policy areas, such as regional and urban development, employment and social inclusion, agriculture and rural development, maritime and fisheries policies, research and innovation, and humanitarian aid. The objectives of the funds shall be pursued in full respect of the Union environmental acquis. Article 9 of the Common Provisions Regulation (CPR), which lays down common provisions on the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF+) (24), the Cohesion Fund (CF) (25), the Just Transition Fund (JTF) (26), and the European Maritime, Fisheries and Aquaculture Fund (EMFAF) (27), and financial rules for those and for the Asylum, Migration and Integration Fund (AMIF) (28), the Internal Security Fund (ISF) (29), and the Instrument for Financial Support for Border Management and Visa Policy (BMVI) (30), defines the horizontal principles applicable to these funds:

- Member States and the E. Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds.
- Member States and the E. Commission shall ensure that equality between men and women, gender mainstreaming, and the integration of a gender perspective are taken into account and promoted throughout the preparation, implementation, monitoring, reporting, and evaluation of programs.
- Member States and the E. Commission shall take appropriate steps to prevent any discrimination based on gender,

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racial or ethnic origin, religion or belief, disability, age, or sexual orientation during the preparation, implementation, monitoring, reporting, and evaluation of programs. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programs.

4. The objectives of the Funds shall be pursued in line with the objective of promoting sustainable development as set out in Article 11 TFEU, taking into account the UN Sustainable Development Goals and the Paris Agreement.

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A0HNA - KENTPIKA:

Μαυρομιχάλη 23, 106 80 | T 210 3678800 (30 γραμμές) | F 210 3678922 | E info@nb.org

ΑΘΗΝΑ:

Μαυρομιχάλη 2, 106 80 | T 210 3607521 | F 210 3603975 | E m2bookstr@nb.org

ПАТРА:

Kανάρη 15, 262 22 | T 2610 361600 | F 2610 361515 | E nbpatra@nb.org

ΘΕΣΣΑΛΟΝΙΚΗ:

Φράγκων 1, 546 26 | T 2310 545618, 2310 532134 | F 2310 551530 | E nbthess@nb.org

www.nb.org