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3. European Union

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XII. REPORTS ON INTERNATIONAL ORGANIZATIONS AND BODIES

3. European Union (EU)

Environmental law is one of the legal areas that is distributed across the entirety of the multi-layered governance system that exists in the EU its member states and, in several member states, at the sub-national level. As such, EU environmental law is a key part of the environmental law applying to the member states. Indirectly, due to the EU's importance as a market and as a source of products, EU environmental standards influence behaviour outside the EU as well. The beginning of the past year for the EU was characterized by the arrival of a new Commission that began its term on 1 December 2019. The most immediate and obvious impact of the plans of the new Commission is the European Green Deal (EGD). Under the EGD, the EU plans to become carbon-neutral by 2050. Among the most important points of contention regarding the EGD is the phasing out of the reliance on coal for the creation of energy. Currently, a number of EU member states, such as Poland, Czechia, and Hungary, continue to rely on fossil fuels—in particular, locally sourced coal—for the generation of electrical energy. The EGD will bring significant challenges and the EU has already responded to concerns over the fairness of the transition to a carbon neutral economy—for example, by financing scientific research on the energy transition not only from the perspective of the natural sciences but also taking into account the social sciences. To a great degree “Brexit”—the end of the EU membership of the United Kingdom on 31 January—and the practical realization of Brexit and the short transition period until the end of 2020, in addition to the impact of the COVID 1-9 pandemic, dominated the work of the EU. Environmental aspects were also a concern in the search for common ground between the EU and the British government to regulate the post-Brexit relationship between the United Kingdom and the EU. A compromise between the EU and the United Kingdom was found only on 24 December and concerns have been voiced that the post-Brexit protection of the natural environment in the United Kingdom will be reduced when compared to the situation during the United Kingdom's membership in the EU. This is not surprising as the EU's rules no longer apply to the United Kingdom directly. With the end of the transition period on 31 December, the legal relationship between the EU and its former member has changed fundamentally. Instead of a relationship between supranational entity and member state, which included a partial shift of sovereignty from the latter to the former, the relationship is now one based on what is, in practice, an international trade agreement. The deal between the EU and the United Kingdom allows the imposition of tariffs on the United Kingdom by the EU, should EU standards not be met. This reflects the new power differential between the EU and the significantly smaller United Kingdom and is, in principle, not different from

other trade situations. While the EU market will remain important for UK producers, overall, it seems reasonable to assume that environmental protection standards in the United Kingdom will suffer due to Brexit as there is a real risk of the current UK government being willing to engage in a regulatory race to the bottom with a view to markets outside of the EU. For the remaining member states of the EU, the implications will likely be limited.

For most of the EU, despite the historic situation of Brexit, the COVID-19 pandemic has been the defining topic of the year. The pandemic also has implications for the protection of the natural environment, as the emergence of COVID-19 has led to more attention being given to the connections between human health and the effects of human activities on the natural environment—in particular, on the increasing encroachment of humans on animal habitats, the loss of biodiversity, and the connection between the natural environment, animal health, and human health. This ‘One Health’ approach, which is also supported by the World Health Organization, has received attention from the EU for some time—for example, in the form of the EU-funded One Health European Joint Programme or through the reports on zoonoses that have been published by the European Centre for Disease Prevention and Control in the last decade. The connection between human health and the protection of the natural environment is therefore not a new issue for the EU.

One topic that is gaining more attention recently is the issue of animal welfare, which is rightly seen as a key aspect of One Health. Animal welfare reform at the EU level will have to take the need for a more complete and holistic approach into account. The connection between biodiversity and human health was already outlined by the new president when addressing the 2020 United Nations Biodiversity Summit, when von der Leyen referred to a ‘loop of doom.’ This year, the EU took the lead on the way to a new, ambitious, international treaty to protect biodiversity, to be adopted at the fifteenth Conference of the Parties to the Convention on Biological Diversity. Originally planned to be held in Kunming, China, in the autumn, it has now been postponed to 2021. However, at the end of 2020, it is far from certain that the EU will be able to achieve this lofty goal.

The EU’s Biodiversity Strategy 2020 (COM(2020) 380 final) aims at building ‘resilience’ in the face of current and growing threats, such as climate change, and of tangible effects, such as forest fires, but also takes into account food security and diseases, thereby reflecting a connection to the One Health approach. At the core of the efforts to protect biodiversity in Europe is a spatial approach, which essentially consists of enlarging protected areas. This would build on the work done before under frameworks such as Natura 2000. Areas that are deemed particularly important in terms of limiting climate change and that are valuable in terms of biodiversity are to be given additional protection. While this spatial approach may be relatively easy to implement (that is, compared to more systematic changes), there is a risk that factors such as long-distance pollution are not given sufficient attention. Attempts to effect systemic change are also part of the Biodiversity Strategy, but they appear to be phrased more vaguely. Particular attention will be given to the food and agriculture sectors as well as to the construction sector—an approach that is understandable and that targets key problem areas, but is restricted to spatial measures rather than systemic changes.

To make the case for the protection of biodiversity, the Commission is emphasizing the business side of protecting biodiversity and the economic cost of biodiversity loss. But the EU’s plans go farther: by the end of 2021, the Commission proposes to draft plans to restore nature as well. Ecosystem restoration is a long-term goal of the EU. To this end, the nature restoration targets that the Commission plans to announce in 2021 will eventually become legally binding. This renaturalization will also affect areas currently used for agriculture, while the EU hopes to improve the availability of safe and healthy food that is created in a sustainable manner. While it is too early to comment on this, it is at least somewhat promising that

biodiversity efforts are not limited to saving remaining biodiversity but might include efforts to bring back what has been lost—which is already reflected in the subtitle of the Biodiversity Strategy: ‘Bringing nature back into our lives.’ It is the stated goal of the Commission to achieve restoration, protection, and resilience in all of Earth’s ecosystems by 2050. The EU is cognizant that legislation alone will not be sufficient to achieve this goal but that it will require systemic change, which is carried by society as a whole.

The Commission’s Biodiversity Strategy 2030 has to be seen in conjunction with the Farm to Fork Strategy and the Common Agricultural Policy (CAP). The Farm to Fork Strategy is part of the EGD and aims at security sustainable food production, leading to food security and food safety. The strategy seeks to enhance sustainability throughout the entire production chain (as the name already implies), targeting issues such as the use of chemicals in fertilizers and a reduction of fertilizer runoff effects, especially regarding phosphorus and nitrogen, which is leading to eutrophication—for example, of the Baltic Sea. In more general terms, the Farm to Fork Strategy seeks to reduce the climate footprint of the agricultural and food sectors as well as food waste and waste generated in the context of food production, transportation, and consumption. On the other hand, the strategy pursues the goal to increase animal and plant health. This, in turn, links agriculture and food production, essential sectors for the European economy and of crucial importance for everybody, to the protection of human health and biodiversity and to one of the most important aspects of the work of the EU—the EU’s CAP.

The relationship between CAP and the EGD was outlined in the Commission document SWD(2020) 93 final of 20 May 2020, *Analysis of Links between CAP Reform and Green Deal*, according to which the new CAP will pursue nine specific goals: ensuring a fair income for those working in agriculture; securing the competitiveness of the European agricultural sector; addressing power imbalances in the food chain—that is, between farm and fork; acting on climate; protecting the natural environment; protecting biodiversity; and, again connecting to One Health, ensuring human, animal, and plant health. In addition, CAP contains economic aspects, taking into account the next generation of farmers and the future of rural areas, many of which suffer from large-scale outmigration. Member states will be called upon to work towards significant improvements in all of these areas. This duty will be phrased in legally binding terms, meaning that a return to previous lower standards or a failure to become more ambitious also on the national level will have direct implications for the legal relationship between the EU and the member states. This will also be reflected in budget allocations.

It is difficult not to see in the documents published by the Commission in this context a certain frustration on the part of Brussels with some member states that have been less than committed to ideas of sustainability in agriculture. Under the new CAP, sustainability in agriculture will, more than ever before, evolve from policy goal to legal obligation. This, however, not only brings obligations for farmers but also takes into account the needs of farmers and of rural communities. Insofar, sustainability as understood in the new CAP is not only environmental but also social in nature. Sustainability is seen as an aspect of rural development policy—a fact that, too, will be reflected in funding allocations and development measures, such as support for the increasing availability of broadband internet access also in rural areas. At a time when modern telecommunication systems, including satellite navigation, play an important role in agriculture, fairness dictates equal access to such services. Temporary provisions regarding the new CAP are already being implemented.

The EU also adopted a New Hydrogen Strategy this year, which is meant to contribute to the fight against climate change. Together with renewable energy, hydrogen is seen as a key technology for the reduction of greenhouse gas emissions. The EU’s new policy is not

limited to legislative measures but also takes into account, for example, investments and global efforts. The New Hydrogen Strategy is closely connected to the New Industrial Strategy (one of the first new strategies adopted by the new Commission) and the planned Sustainable and Smart Mobility Strategy.

In addition, the EU's new strategy on forests is particularly promising. The feedback period for the planned new forest strategy ended in December. At the time of writing, only the outlines are known—that is, a focus on restoration and preservation of forests. While new strategies took centre stage in the first year of the new Commission, large parts of the environment-related work on the EU level this year were not very different from the policy, legislative, and judiciary activities in earlier years and in many cases build on efforts that have been underway for some time. One example is a renewal of the EU's chemicals policy—for example, concerning perfluorinated alkylated substances, well underway, where a number of member states have already expressed a desire for even stricter rules.

Overall, it can be concluded that change is necessary and, at least at the EU level, it is happening, also in legal terms. The new EU Commission is ambitious when it comes to environmental concerns, but it remains to be seen whether the measures taken so far and those that are planned under the new strategies will be enough, and if they will come in time in order to prevent further harm to the natural environment in an EU that now only counts twenty-seven member states.

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