

# Environment & Climate Regulation 2022

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**Contributing editors**

**James M Auslander and Brook J Detterman**  
Beveridge & Diamond PC

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Lexology Getting The Deal Through is delighted to publish the seventh edition of *Environment & Climate Regulation*, which is available in print and online at [www.lexology.com/gtdt](http://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 the European Union.

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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, James M Auslander and Brook J Detterman of Beveridge & Diamond PC, for their continued assistance with this volume.



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# European Union

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## MAIN CLIMATE REGULATIONS, POLICIES AND AUTHORITIES

### International agreements

1 | Do any international agreements or regulations on climate matters apply in your country?

The EU is a party to the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Kyoto Protocol, the Vienna Convention for the Protection of the Ozone Layer, and the Montreal Protocol.

### International regulations and national regulatory policies

2 | How are the regulatory policies of your country affected by international regulations on climate matters?

The EU actively participates in the elaboration, ratification and implementation of their multilateral environmental agreements (including the UNFCCC, Paris Agreement and Kyoto Protocol).

In response to the Kyoto Protocol, the European Commission established the European Climate Change Programme. The purpose was to determine policies that would ensure that the EU meets its target for reducing emissions under the Kyoto Protocol. Furthermore, the EU is committed to ensuring the successful implementation of the Paris Agreement. To this end, member states have agreed to meet several targets in the coming years. This is reflected in EU legislation and legislative proposals issued or envisaged in the context of the European Green Deal, including Regulation (EU) 2021/1119 (the European Climate Law) (enshrining the 2050 climate-neutrality objective into EU law) and the 2030 Climate Target Plan (providing for a further reduction of net greenhouse gas (GHG) emissions by at least 55 per cent by 2030). A key tool to reduce its GHG emissions is the EU's Emissions Trading System. Furthermore, the commitment under the Kyoto Protocol for the land use, land-use change and forestry sector to have no net emissions is enshrined in Regulation (EU) 2018/841 (the LULUCF Regulation). The EU is promoting global action through the UNFCCC, other international fora (such as the Intergovernmental Panel on Climate Change, G8 and G20, the Major Economies Forum on Energy and Climate, etc) as well as through bilateral arrangements with other countries or regions.

### Main national regulatory policies

3 | Outline recent government policy on climate matters.

The European Commission wants the EU to play a leading role in implementing the Paris Agreement and the efforts to reduce GHG emissions. In this regard, the Commission presented the European Green Deal on 11 December 2019, where member states agreed that the EU should eventually become climate neutral by 2050.

The European Green Deal covers all sectors of the economy, notably transport, energy, agriculture, buildings, and industries such as

steel, cement, ICT, textiles and chemicals. Combating climate change is to be achieved by making more use of renewable energy sources, such as wind power and solar power.

The main initiatives under the European Green Deal include the European Climate Law; the European Climate Pact to engage citizens and all parts of society in climate action; the 2030 Climate Target Plan; the new EU Strategy on Climate Adaptation to make Europe a climate-resilient society by 2050, fully adapted to the unavoidable impacts of climate change; and the revision of Directive (EC) 2003/96 (the Energy Taxation Directive) to align taxation of energy products and electricity with EU energy and climate policies to contribute to the EU 2030 energy targets and climate neutrality by 2050.

In July 2021, just a few weeks after the adoption of the European Climate Law, the Commission presented a package of concrete legislative proposals, under the heading of 'Fit for 55', which should help to achieve these targets. In particular, the package seeks to update a number of pieces of EU climate legislation, setting forth specifically how the Commission intends to meet the aforementioned EU climate targets.

### Main national legislation

4 | Identify the main national laws and regulations on climate matters.

- The European Climate Law was adopted on 30 June 2021 and aims to reduce GHG emissions by 55 per cent in 2030 compared to 1990 levels and to achieve the EU's objective of becoming climate neutral by 2050.
- Directive 2003/87/EC (the EU ETS) sets out the framework for the EU Emissions Trading System.
- Regulation (EU) 2018/842 (the Effort Sharing Regulation) contains binding annual GHG emission targets for each member state for the period 2021–2030, based on the principles of fairness, cost-effectiveness and environmental integrity.
- Regulation (EU) 2018/841 (the LULUCF Regulation) contains the binding 'no debit' rule, meaning that each member state must ensure that accounted emissions from land use are entirely compensated by an equivalent accounted removal of CO<sub>2</sub> from the atmosphere through action in the sector.
- Regulation (EC) 1005/2009 (the EU Ozone Regulation) generally prohibits the use of ozone-depleting substances (subject to exceptions).
- Regulation (EU) 517/2014 (the F-gas Regulation) imposes limits on the amount of F-gases that can be sold in the EU, bans the use of F-gases in several new types of equipment and imposes requirements that prevent emissions from F-gases from existing equipment.

## National regulatory authorities

- 5 Identify the national regulatory authorities responsible for climate regulation and its implementation and administration. Outline their areas of competence.

This is regulated on a member state level.

## GENERAL NATIONAL CLIMATE MATTERS

### National emissions and limits

- 6 What are the main sources of emissions of greenhouse gases (GHG) (or other regulated emissions) in your country and the quantities of emissions from those sources? Describe any limitation or reduction obligations. Do they apply to private parties in your country?

According to publicly available figures from 2018, the energy-producing industries emit the most GHGs (28 per cent), followed by fuel combustion by energy users (excluding transport) (25.5 per cent) and the transportation sector (24.6 per cent).

Regarding GHG limitation and reduction obligations, Directive 2003/87/EC (the EU ETS) and Regulation (EU) 2018/842 (the Effort Sharing Regulation) are of importance.

The EU ETS applies to emissions from the activities listed in its Annex I (ie, installations in the power sector and manufacturing industry, as well as airlines operating in the EEA) and GHGs listed in Annex II (ie, carbon dioxide, nitrous oxide, perfluorocarbons, methane hydrofluorocarbons and sulphur hexafluoride). More specifically, the EU ETS covers about 40 per cent of the EU's GHG emissions. The EU ETS limits the emissions by setting a cap on the total amount of certain GHGs that can be emitted by the installations that fall within its scope (ie, it applies to private parties).

The other 60 per cent of the EU's GHG emissions are mostly covered by the Effort Sharing Regulation. This Regulation applies in particular to GHG originating from the following sectors: energy, industrial processes and product use, agriculture and waste, but excluding the emissions from the activities listed in Annex I of the EU ETS. It confers annual emission allocations upon each member state for the years 2021 to 2030.

Data: <https://ec.europa.eu/eurostat/cache/infographs/energy/bloc-4a.html>.

### National GHG emission projects

- 7 Describe any major GHG emission reduction projects implemented or to be implemented in your country. Describe any similar projects in other countries involving the participation of government authorities or private parties from your country.

The Innovation Fund aims to fund a diverse project pipeline that achieves an optimal balance of a wide range of innovative technologies across all qualifying industries and member states, as well as Norway and Iceland. Between 2020 and 2030, the Innovation Fund will provide roughly €20 billion in support for the commercial demonstration of innovative low-carbon technologies, with the goal of bringing to market industrial solutions to decarbonise Europe and help its transition to climate neutrality. In particular, the Innovation Fund focuses on highly innovative technologies and large-scale flagship projects in the EU that can result in significant reductions in emissions.

The Innovation Fund forms the successor of the NER 300 Programme, which funded, inter alia, the onshore wind project Windpark Handalm in Austria (consisting of 13 windmills and producing around

76MWh a year) and the two offshore wind projects Nordsee and Veja Matein in Germany (with a respective capacity of 332MWh and 402MWh).

The Life Climate Change Mitigation and Adaptation programme is a programme that administers approximately €905 million that is used to develop and execute innovative solutions for climate challenges. It particularly supports the implementation of the European Green deal. It is divided into four subcategories: 'Nature and biodiversity', 'Circular economy and quality of life', 'Climate change mitigation and adaptation' and 'Clean energy transition'.

## DOMESTIC CLIMATE SECTOR

### Domestic climate sector

- 8 Describe the main commercial aspects of the climate sector in your country, including any related government policies.

On 12 July 2020, Regulation (EU) 2020/852 (the Taxonomy Regulation) entered into force, establishing the basis for the EU taxonomy by setting out several overarching conditions that an economic activity has to meet in order to qualify as environmentally sustainable. The EU taxonomy provides relevant definitions for which economic activities can be considered environmentally sustainable to enterprises, investors and policymakers. As a result, it should provide investors with security, shield private investors from greenwashing, assist businesses in becoming more climate-friendly, reduce market fragmentation, and assist in shifting investments to where they are most needed.

Furthermore, sustainability considerations have become key factors in assessing investment opportunities in the financial markets. In this framework, the EU has enacted the Disclosures Regulation (Regulation (EU) 2019/2088), which essentially requires manufacturers of financial products and financial advisers to disclose information on sustainability with regard to the investment towards the end-investors.

On a similar note, the EU enacted Directive (EU) 2014/95 (the NFRD) setting forth disclosure obligations for certain large companies on non-financial information, including environmental matters. The Commission has also published (non-binding) climate reporting guidelines for companies more generally.

In addition, we refer to Directive 2003/87/EC (the EU ETS) – this creates a commercial market between operators of installations that are subject to the EU ETS for the trade of emission allowances.

Finally, the EU has a number of funding possibilities in the energy sector that promote projects that benefit the environment (by reducing GHG emissions, by using renewable energy, by developing innovative solutions for clean energy, etc). These include the EU's Cohesion Fund, Horizon 2020 and Horizon Europe as well as the LIFE programme and the Innovation Fund.

## GENERAL GHG EMISSIONS REGULATION

### Regulation of emissions

- 9 Do any obligations for GHG emission limitation, reduction or removal apply to your country and private parties in your country? If so, describe the main obligations.

Directive 2003/87/EC (the EU ETS) and Regulation (EU) 2018/842 (the Effort Sharing Regulation) are mainly of importance regarding GHG limitation and reduction obligations.

The EU ETS applies to emissions from the activities listed in its Annex I and GHG listed in its Annex II. More specifically, the EU ETS covers about forty percent of the EU's GHG emissions.

The EU ETS limits the emissions by setting a cap on the total amount of certain GHGs that can be emitted by the installations. This cap is gradually dropped, ensuring that overall emissions are reduced.

Within the EU ETS framework, operators of installations can buy or receive emissions allowances and are able to trade such allowances with other operators. The EU ETS is currently in Phase IV, meaning that the cap on the total amount of emissions is annually decreased at a rate of 2.2 per cent.

The EU's GHG emissions from activities that are not within the scope of the EU ETS are mostly covered by the Effort Sharing Regulation. This Regulation applies in particular to GHG emissions originating from the following sectors: energy, industrial processes and product use, agriculture and waste, but excluding the emissions from the activities listed in Annex I of the EU ETS.

To fulfil the EU's target of reducing its GHG emissions by 30 per cent below 2005 levels in 2030, this Regulation confers annual emission allocations upon each member state for the years 2021 to 2030. These are binding annual limits to the GHG emissions of a member state. This is not to be confused with the allowances (at the level of the installations) and total cap foreseen in the EU ETS.

### GHG emission permits or approvals

**10** | Are there any requirements for obtaining GHG emission permits or approvals? If so, describe the main requirements.

The EU ETS requires member states to introduce a GHG emissions permit system for operators of certain activities. In particular, member states must ensure that, from 1 January 2005, no installation carries out any activity listed in Annex I of the EU ETS resulting in emissions specified in relation to that activity unless its operator holds a permit issued by a (national) competent authority.

The application to the competent authority for a GHG emissions permit must include a description of the following: (1) the installation and its activities; (2) raw and auxiliary materials whose use is likely to result in emissions of the gases listed in Annex I; (3) the sources of emissions of gases; and (4) the measures planned to monitor and report emissions.

Only if the competent authority is satisfied that the operator is capable of monitoring and reporting emissions will it issue a GHG emissions permit authorising the emission of GHG from all or part of an installation. In this regard, the operator is subject to a formal monitoring plan.

The permit contains, inter alia, a description of the activities and emissions from the installation, monitoring requirements and reporting requirements.

### Oversight of GHG emissions

**11** | How are GHG emissions monitored, reported and verified?

#### At the level of private operators

The operators of the installations that are covered by the EU ETS are required to have an approved monitoring plan for monitoring and reporting annual emissions. This plan is also included in the GHG emissions permit. Each year, operators must monitor and report on their emissions. In addition, they must surrender enough allowances to cover their annual emissions. In this regard, operators must submit an emissions report. The data submitted will then be verified by an accredited verifier by 31 March of the following year.

#### At the level of the member states

In accordance with Regulation 525/2013/EU (the Climate Monitoring Mechanism) and its implementing legislative instruments), the member states are required to monitor their emissions and report on their emissions in line with the EU's internal reporting rules. These reporting rules are based on the reporting obligations included in the United Nations Framework Convention on Climate Change, the Kyoto Protocol

and the Paris Agreement. This reporting covers, among others, seven GHGs from all sectors – referred to as the 'greenhouse gas inventory'.

As of 1 January 2021, the Climate Monitoring Mechanism has been replaced by Regulation 2018/1999/EU (the Governance Regulation), which requires member states to develop integrated national energy and climate plans. The reporting for years 2019 and 2020, which takes place in 2021 and 2022, will still be governed by the Climate Monitoring Mechanism.

In addition, the member states have strong monitoring and annual reporting obligations under Decision No. 406/2009/EC (the Effort Sharing Decision) that implements the Effort Sharing Regulation.

### GHG EMISSION ALLOWANCES (OR SIMILAR EMISSION INSTRUMENTS)

#### Regime

**12** | Is there a GHG emission allowance regime (or similar regime) in your country? How does it operate?

Directive 2003/87/EC (the EU ETS) provides for a GHG emissions allowance regime. Within the cap, operators obtain or acquire emission allowances, which they can trade as needed. Each allowance entitles the holder the right to emit one tonne of carbon dioxide, or the equivalent amount of other powerful GHGs, nitrous oxide and perfluorocarbons. The allocation of allowances is done by free allocation, where operators of installations obtain allowances at no cost, or through auctioning.

The allowances are auctioned three times a week via EEX, an auction platform which has been appointed as the common auction platform by the European Commission. Companies that match the auction platform's criteria are eligible to participate in the auction. Bidders in joint European auctions include investors, banks and credit organisations.

#### At the level of the member states

Regulation (EU) 2018/842 (the Effort Sharing Regulation) provides for annual emission allocations to the member states. The national targets are based on member states' relative wealth, measured by gross domestic product per capita.

#### Registration

**13** | Are there any GHG emission allowance registries in your country? How are they administered?

The GHG emissions allowances are registered and administered at EU level in the Union Registry. The Union Registry is managed by a central administrator and is used by member states to ensure accurate allowance accounting and transaction recording.

The Union Registry keeps track of, inter alia, accounts of companies or individuals holding emission allowances, transfers of allowances (transactions) and verified emissions, where each company or individual must have surrendered enough allowances to cover all its verified emissions.

To participate in the EU Emissions Trading System, companies or individuals must open an account in the Union Registry. To open an account, they must first submit a request to the national administrator of their member state, who will collect and review all supporting documentation. After opening the account, they can log in to the Union Register, where they can access their accounts and transfer emission allowances to other accounts via transactions.

## Obtaining, possessing and using GHG emission allowances

- 14 | What are the requirements for obtaining GHG emission allowances? How are allowances held, cancelled, surrendered and transferred? Can rights in favour of third parties (eg, a pledge) be created on allowances?

Auctioning forms the EU ETS's default method for allocating emission allowances. This means that at the beginning of the year, operators either are allocated allowances or have to buy allowances through an auction procedure to cover all their emissions for the coming year.

However, a limited number of free allowances is provided each year. Except to the power sector, carbon capture and storage installations and pipelines, the aforementioned free allowances are provided to all sectors on a transitional basis. In addition, free allocations are also made to installations in sectors assessed to be at danger of carbon leakage. In particular, from 2021 on, sectors at the highest risk of relocating their production outside of the EU will receive 100 per cent of their allocation for free. Free allocation for less exposed sectors is expected to be phased out after 2026, going from a maximum of 30 per cent to zero per cent at the end of Phase IV in 2030. Furthermore, a significant number of free allowances will be set aside for new and expanding installations.

All allowances are issued by the central administrator, who creates them in the Union Registry on the EU total quantity account. The Union Registry is thereafter in charge of holding and surrendering the allowances. The allowances might be surrendered at any time throughout the trading period.

When, at the end of the year, an operator's emissions exceed the amount of allowances it possesses, or operators have emitted fewer GHG emissions than the number of allowances they hold, allowances can be transferred between the operator and the other market players in the EU Emissions Trading System. The allowances are then transferred between the Union Registry accounts. The transfer instructions are sent electronically by the seller's authorised representatives, who specify the number of units to be transferred as well as the details of the recipient's account. Once trades are confirmed, instructions are sent to the Union Registry for the physical transfer to occur.

Lastly, it should be mentioned that operators can also choose to voluntarily cancel allowances, which means that the allowances will be permanently removed from circulation and deleted from the Union Registry, without using them for compliance. Within the Union Registry, a specific deletion account is provided for this purpose.

## TRADING OF GHG EMISSION ALLOWANCES (OR SIMILAR EMISSION INSTRUMENTS)

### Emission allowances trading

- 15 | What GHG emission trading systems or schemes are applied in your country?

Directive 2003/87/EC (the EU ETS) limits GHG emissions by setting a cap on the total amount of certain GHGs that can be emitted by installations. This cap is gradually dropped, ensuring that overall emissions are reduced.

Within the cap, operators receive or acquire emission allowances, which they can trade as needed. Each allowance entitles the holder the right to emit one tonne of carbon dioxide, or the equivalent amount of other powerful GHGs, nitrous oxide and perfluorocarbons. The allocation of allowances is done by free allocation, where operators of installations obtain allowances at no cost, or through auctioning.

When, at the end of the year, an operator's emissions exceed the amount of allowances it possesses, or operators have emitted fewer GHG emissions than the number of allowances they hold,

allowances can be transferred between the different operators in the Emissions Trading System.

### Trading agreements

- 16 | Are any standard agreements on GHG emissions trading used in your country? If so, describe their main features and provisions.

There are no standard agreements on GHG emissions trading used in the EU. Internationally, however, there exist several standard forms which can be used, such as the IETA Emissions Trading Master Agreement (version 4).

## SECTORAL REGULATION

### Energy sector

- 17 | Give details of (non-renewable) energy production and consumption in your country. Describe any regulations on GHG emissions. Describe any obligations on the state and private persons for minimising energy consumption and improving energy efficiency. Describe the main features of any scheme for registration of energy savings and for trade of related accounting units or credits.

The EU produces energy from a variety of sources, including solid fossil fuels, natural gas, crude oil, nuclear energy, and renewable energy (such as hydro, wind and solar energy). According to publicly available figures from 2019, Renewable energy (37 per cent) is the largest contributor to energy production in the EU. Nuclear energy comes in second (32 per cent), followed by solid fuels (19 per cent), natural gas (8 per cent), and crude oil (4 per cent).

That same year, petroleum products (such as heating oil, petrol, and diesel fuel) accounted for 41 per cent of total energy consumption, followed by natural gas and electricity (both 21 per cent), as well as direct use of renewables (for space heating or hot water production, eg, wood, solar thermal, geothermal, or biogas) (10 per cent), derived heat (such as district heat) (4 per cent), and solid fossil fuels (2 per cent).

Regarding renewable energy, Directive 2018/2001/EU (the Renewable Energy Directive) forms the main instrument. The Renewable Energy Directive establishes a common framework for the promotion of renewable energy and a binding EU target for the overall share of renewable energy in the EU's gross final energy consumption in 2030, namely 32 per cent of the EU's final energy consumption should come from renewable energy sources by 2030.

Regarding energy efficiency, Directive 2018/2002/EU (the Energy Efficiency Directive) is of importance as it sets a target of a 32.5 per cent reduction in primary energy consumption at EU level by 2030, compared to the 2007 modelling projections of energy consumption for 2030. Additionally, the Energy Efficiency Directive requires member states to achieve cumulative end-use energy savings equivalent to new savings each year from 1 January 2021 to 31 December 2030 of 0.8 per cent of annual final energy consumption, averaged over the most recent three-year period prior to 1 January 2019. For the period 2021–2030, each member state has to develop a 10-year Integrated National Energy and Climate Plan, setting out how it plans to achieve its energy efficiency targets by 2030.

The European Commission proposed a revision of the Renewable Energy Directive and the Energy Efficiency Directive in July 2021 as part of the package to deliver on the European Green Deal.

Furthermore, various pieces of legislation require and incentivise energy savings in energy and industrial installations. Directive 2010/75/EU (the Industrial Emissions Directive), for example, requires operators to gradually implement best available techniques (BATs) and



correspondingly upgrade and modernise their installations, including energy efficiency measures.

Data source: [https://ec.europa.eu/eurostat/cache/infographs/energy/img/pdf/shedding-light-in-the-EU-2021\\_en.pdf?lang=en](https://ec.europa.eu/eurostat/cache/infographs/energy/img/pdf/shedding-light-in-the-EU-2021_en.pdf?lang=en).

### Other sectors

18 | Describe, in general terms, any regulation on GHG emissions in connection with other sectors.

Several specific pieces of legislation on GHG emissions exist. By a way of example, the F-gas Regulation aims to protect the environment by reducing emissions of fluorinated GHGs. This Regulation establishes rules on containment, use, recovery and destruction of fluorinated GHGs, imposes conditions on the placing on the market of specific products and equipment that contain the gases and imposes conditions on specific uses of the gases.

Another example is Regulation (EU) 2018/841 (the LULUCF Regulation). Under the LULUCF Regulation, member states must ensure that the accounted GHG emissions from land use, land use change and forestry are balanced by an equivalent accounted removal of CO<sub>2</sub> from the atmosphere for the period 2021–2030.

## RENEWABLE ENERGY AND CARBON CAPTURE

### Renewable energy consumption, policy and general regulation

19 | Give details of the production and consumption of renewable energy in your country. What is the policy on renewable energy? Describe any obligations on the state and private parties for renewable energy production or use. Describe the main provisions of any scheme for registration of renewable energy production and use and for trade of related accounting units or credits.

Directive 2018/2001/EU (the Renewable Energy Directive) establishes a binding EU target for the overall share of renewable energy in the EU's gross final energy consumption in 2030: 32 per cent of EU final energy consumption should come from renewable energy sources by 2030.

In July 2021, the European Commission made a proposal to amend the Directive. The proposal aims to increase the overall binding target for renewable energy from the current 32 per cent to 40 per cent, supplemented by indicative national contributions of member states in order to meet the collective EU target. Furthermore, the Commission proposed specific targets for renewable energy use in certain sectors (eg, transport, heating and cooling, and buildings) by 2030.

### Wind energy

20 | Describe, in general terms, any regulation of wind energy.

Regarding wind energy, the Renewable Energy Directive is the main instrument.

Additionally, a new EU Strategy on Offshore Renewable Energy was published in November 2020, with a focus on offshore wind energy. According to the Strategy, the EU's offshore wind capacity should increase from 12GW to at least 60GW by 2030, and 300GW by 2050.

Permitting requirements and government incentive schemes for turbines are regulated on a national level. However, the Renewable Energy Directive includes several provisions that simplify permitting processes (eg, via a single point of contact).

### Solar energy

21 | Describe, in general terms, any regulation of solar energy.

Regarding solar energy, the Renewable Energy Directive is the main instrument.

Permitting requirements and government incentive schemes for solar energy plants are regulated on a national level. However, the Renewable Energy Directive includes several provisions that simplify permitting processes (eg, via a single point of contact).

### Hydropower, geothermal, wave and tidal energy

22 | Describe, in general terms, any regulation of hydropower, geothermal, wave or tidal energy.

Regarding hydropower, geothermal, wave and tidal energy, the Renewable Energy Directive is the main instrument.

In addition, the European Commission has issued a communication entitled 'Blue Energy: Action needed to deliver on the potential of ocean energy in European seas and oceans by 2020 and beyond', which lays out an action plan to support the development of ocean energy, which includes wave and tidal energy. The EU has also set cost-reduction targets for ocean energy technologies for the next decade. This can be found in their Strategic Energy Technology Plan.

Permitting requirements and government incentive schemes for the production of such energy are regulated on a national level. However, the Renewable Energy Directive includes several provisions that simplify permitting processes (eg, via a single point of contact).

### Waste-to-energy

23 | Describe, in general terms, any regulation of production of energy based on waste.

Regarding waste-to-energy, two directives are of particular importance: the Renewable Energy Directive and Directive 2003/87/EC (the EU ETS).

The Renewable Energy Directive states that when promoting renewable energy initiatives, member states must take into account the waste hierarchy and circular economy principles, with waste prevention and recycling as top priorities. According to the Renewable Energy Directive, no support shall be given for renewable energy production from waste incineration, unless the separate collection obligations under Directive 2009/98/EC (the Waste Framework Directive) are met. As a result, when implementing this provision, member states must assess whether the Waste Framework Directive's separate collection requirements are being complied with.

Under the EU ETS, a GHG emissions permit issued by a competent authority is required for any installation that carries out any activity listed in Annex I to the EU ETS resulting in emissions specified in relation to that activity. As a result, waste energy plants must hold a permit before carrying out any activity, when it concerns combustion installations with a rated thermal input exceeding 20MW.

### Biofuels and biomass

24 | Describe, in general terms, any regulation of biofuel for transport uses and any regulation of biomass for generation of heat and power.

Regarding biofuels and biomass, the Renewable Energy Directive is the main instrument.

The Renewable Energy Directive establishes binding criteria for the production of biofuels and biomass to improve sustainability and to be effective at reducing GHG emissions (so-called sustainability criteria). Energy from biofuels and biomass will only be taken into account for the EU target and the renewable energy shares of member states as well

as for assessing compliance with renewable energy obligations if these sustainability criteria are met.

Furthermore, non-binding criteria for biomass have been in place since 2010. The European Commission issued non-binding recommendations in this regard. A Commission implementing regulation (establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass) is expected to be published later this year.

Permitting requirements and government incentive schemes for the production of energy from biofuels and biomass are regulated on a national level. However, the Renewable Energy Directive includes several provisions that simplify permitting processes (eg, via a single point of contact).

### Carbon capture and storage

#### 25 Describe, in general terms, any policy on and regulation of carbon capture and storage.

Directive 2009/31/EC (the CCS Directive) establishes a framework for the environmentally safe geological storage of carbon dioxide to contribute to the fight against climate change. According to the CCS Directive, the purpose of environmentally safe geological storage of CO<sub>2</sub> is permanent containment of CO<sub>2</sub> in such a way as to prevent and, where this is not possible, eliminate as far as possible negative effects and any risk to the environment and human health.

According to the CCS Directive, member states that intend to allow geological storage of CO<sub>2</sub> in their territory must undertake an assessment of the storage capacity available on their territory. Only if there is no significant risk of leakage or damage to human health or the environment can a geological formation be selected as a storage site. In addition, member states must ensure that no storage site is operated without a storage permit.

Furthermore, the operation of the site must be closely monitored, with corrective measures implemented if leakage occurs. The CSS Directive also addresses closure and post-closure obligations and establishes criteria for transferring responsibility from the operator to the member state.

Finally, the operator must secure financial security before starting the CO<sub>2</sub> injection.

In its proposal for a 2030 climate and energy policy framework, the European Commission acknowledges the role of CCS in reaching the EU's long-term emissions reduction target. However, to achieve this target, a supportive EU framework will be essential and will need to be developed.

## CLIMATE MATTERS IN TRANSACTIONS

### Climate matters in M&A transactions

#### 26 What are the main climate matters and regulations to consider in M&A transactions and other transactions?

The main climate matters to be considered in M&A transactions are to be assessed on a case-by-case basis, and in light of domestic climate-related legislation. These range from verifying permits for activities that may have a climate-related impact and an evaluation of compliance with directly applicable EU regulations (eg, Directive 2003/87/EC (the EU ETS)), to an assessment of sustainability risks to which the target company is exposed.

Increased investor focus with regard to sustainability may necessitate increased scrutiny in relation to sustainability efforts of the target company (even if not mandatory on the basis of legislation), and ESG-focused due diligence is gaining importance.

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## UPDATE AND TRENDS

### Emerging trends

#### 27 Are there any emerging trends or hot topics that may affect climate regulation in your country in the foreseeable future?

On 30 June 2021, Regulation (EU) 2021/1119 (the European Climate Law) was adopted. It enshrines the EU's objective of becoming climate-neutral by 2050 in law.

The European Climate Law sets a binding target for reducing net GHG emissions (minus removals) by at least 55 per cent below 1990 levels by 2030 and provides that the interim climate target for 2040 will be set in the coming years. Additionally, the EU will aim to increase carbon net sinks by 2030.

On 14 July 2021, the European Commission adopted the 'Fit for 55' package consisting of a number of legislative proposals to make the EU's climate, energy, land use, transport and taxation policies fit for reaching the binding target of the European Climate Law.

This will, without a doubt, affect the EU's climate regulation in the foreseeable future.

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