



## EU environmental law in face of 2022 challenges: a Prufrock-like confession during times when one should dare?

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The European Union (EU) has been, for a couple of decades now, an important player in the development of environmental law. The bloc's policies and legislation influence both national regulation – due to their binding effect on Member States – and the international agenda – due to their political and economic impact in international affairs.

For the most part, the EU is perceived as being at the cutting edge of environmental pledges, supporting environmental protection in its various forms, and advancing global movements mainly through the implications of its policies for third parties. Nevertheless, on many occasions, European efforts do not match the scale of environmental problems and threats that must be faced, especially where national transposition and implementation are concerned.

Rather like T. S. Eliot's Prufrock, the EU seems “to epitomise the frustration and impotence of the modern individual” and “represent thwarted desires and modern disillusionment”.<sup>1</sup> The protagonist of the poem is a man looking forward to consummating his relationship with a woman, but that knows too much of life to dare believing that an approach to the beloved one could be successful. He is educated and eloquent, but with a tortured psyche that does not believe its goal is achievable.

In the face of the size and complexity of the current environmental problems that must be addressed, a similar freezing effect can be observed. In other words, in the environmental law scenario, governments and institutions often yield to pressures or hesitate to adopt measures that correspond to the protection needed.

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<sup>1</sup>McCoy, Harlan [19].

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The question here then is whether the European Union has what it takes to dare to consummate environmental protection or is it making a Prufrock-like confession on the impossibility of meeting the challenges?

## 1 A quick roadmap of the challenges and their impact on environmental protection: the current status of EU environmental law implementation

In less than five years, Europe and, consequently, the European Union, have been facing a series of economic, health and geopolitical upheavals of global nature. Here, three representative examples are deployed. Already in 2018, the financial crisis had an unprecedented impact on the bloc. 2020 brought the COVID-19 pandemic, accompanied by unforeseen pressures and threats. Finally, 2022 came with the first war on European soil in the twenty-first century.

In 2018, the global financial crisis originating in the United States of America led to a crisis in the Eurozone which exposed institutional flaws in the Economic and Monetary Union. The EU's response was to address the deficiencies with institutional reforms at the national and regional levels, causing a diminution of trust in European politics and organisations.<sup>2</sup>

2020 stands out as the year of the pandemic. On 11 March, the COVID-19 surge was officially declared a pandemic, leading to the adoption of a series of measures necessary to protect life and health, including the closure of borders and strict lockdowns. There were, naturally, severe social and economic consequences, mainly in sectors that depend on human interaction, such as the cultural, creative, and aerospace industries.<sup>3</sup>

Without having yet recovered from the impact of previous upheavals, 2022 started with the invasion of Ukraine by Russia (on 24 February 2022). This triggered several responses from the EU, mainly thanks to a foreign-policy epiphany as regards collective action,<sup>4</sup> but there were also stark internal impacts – with the dependency on Russian gas being the cause of the most notable one.

All these moments of crisis also impacted environmental protection in the region, both from the practical perspective of factual harm, and from the legal theoretical perspective of policy unfolding. The Coronavirus pandemic, for instance, was said to act as an accelerator of digitalisation,<sup>5</sup> and, at least initially, to reduce the emissions of greenhouse gases.<sup>6</sup> However, it operated in the main to increase stress on the environment, especially due to waste generation and mismanagement,<sup>7</sup> and increased

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<sup>2</sup>See, e.g., *Bakir, Coban, Akgunay* [1].

<sup>3</sup>See, e.g., *Maarten de Vet, et al.* [17].

<sup>4</sup>*Mauer, Whitman, Wright* [18].

<sup>5</sup>*Maarten de Vet, et al.* [17], p. 65.

<sup>6</sup>*Le Quéré, C., et al.* [16], p. 10.

<sup>7</sup>*COVID-19 Consumer Law Research Group* [9], p. 43, *Mehta* [20], *Flaccus* [14].

resistance against legal and policy protective measures.<sup>8</sup> Plastics and climate change were fields particularly strongly affected.<sup>9</sup>

Similarly, the war in Ukraine has a high environmental cost for the country, “from forests ignited by shelling to wrecked factories spewing pollution to precarious nuclear plants”.<sup>10</sup> But also for the EU, mainly due to the consequences to the energy sector of the gas and oil supply restrictions imposed by Russia and the consequent global energy crisis,<sup>11</sup> and the necessary shift to alternative energy sources – many times less climate-friendly.<sup>12</sup>

An assessment, concluded by the European Commission for an environmental implementation review in 2022, clearly stated that such a crisis context makes environmental policy ever more critical.<sup>13</sup> This assessment revealed the current status of EU environmental law implementation.

Air quality control and reduction of emissions are among the main enforcement challenges. With the persistent exceeding of limits, the many infringement procedures and case law underline the need of urgent remedial action.<sup>14</sup> For instance, projections reveal that more than 70% of Member States are at high risk of non-compliance with their emission reduction commitments for ammonia in the 2020-2029 period and from 2030 onwards.<sup>15</sup>

Regarding circular economy, although most Member States have strategies and action plans in place, implementation levels are still very heterogeneous, and the goals set out in waste-related documents are unlikely to be achieved.<sup>16</sup> In the field of biodiversity and natural capital, results keep declining.<sup>17</sup> Insofar as concerns water quality and management, efforts continue, but the progress in achieving good status is slow and much data remains either incorrect or unknown.<sup>18</sup> As regards chemical legislation, enforcement of REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) and CLP (the Classification, Labelling and Packaging Regulation) is considered to have improved in comparison to 2010-2012, and compliance levels are stable over time.<sup>19</sup> Legislative improvements are still, however, on hold. Finally, climate action has seen a better level of implementation,<sup>20</sup> but most figures are from

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<sup>8</sup>For an analysis of the implications of the COVID pandemic for EU environmental law, see *Santos Silva, Cortat Simonetti Goncalves* [24].

<sup>9</sup>*Cortat Simonetti Goncalves* [7], *Santos Silva, Cortat Simonetti Goncalves* [24].

<sup>10</sup>*Pearce* [21], *United Nations Environment Programme* [28], *Pereira* [22].

<sup>11</sup>*Braun* [2]. This is not even to mention the emissions caused directly by the war. In this sense, see *e.g., de Klerk* [11].

<sup>12</sup>*Cwienk* [10], *DW* [12].

<sup>13</sup>Communication COM(2022) 438 final [4].

<sup>14</sup>Communication COM(2022) 438 final [4], p. 9-10.

<sup>15</sup>*Ricardo Energy & Environment* [23], p. 85-86. Communication COM(2022) 438 final [4], p. 8-11.

<sup>16</sup>Communication COM(2022) 438 final [4], p. 3-5.

<sup>17</sup>Communication COM(2022) 438 final [4], p. 5-8.

<sup>18</sup>Communication COM(2022) 438 final [4], p. 11-13.

<sup>19</sup>Communication COM(2022) 438 final [4], p. 13-15.

<sup>20</sup>Communication COM(2022) 438 final [4], p. 15-17.

before COVID and before the war in Ukraine, both of which events that have had a high impact on emissions and on climate change.

## 2 EU work plan for 2023

The mostly negative status of the implementation of EU substantive environmental law and the pessimistic forecasts regarding achieving environmental goals should be reason enough for focusing on improving governance and implementation in the years to come. Thus, analysis here naturally moves to the EU work plan for 2023, with a focus on its environmental aspects.

As expected, the plan was designed to focus precisely on responding to the previously described crises. To do so, the key indicated areas were green and digital transformations. The headline ambition related to environmental law is regarding the European Green Deal, with emphasis on energy transition, waste, food, and animal welfare:

*“Against the backdrop of Russia’s war against Ukraine, the Commission will propose in early 2023, amongst other initiatives, a comprehensive reform of the EU’s electricity market, including decoupling electricity and gas prices. To help rapidly scale up our green hydrogen economy, the Commission will propose to create a new European Hydrogen Bank, which will invest €3 billion into kick-starting a hydrogen market in the EU.*

*In 2023, the Commission will also take action to reduce waste and the environmental impact of waste, with a focus on food and textile waste, a topic identified during the Conference on the Future of Europe. Similarly, in response to citizens’ concerns, the Commission will propose overhauling EU animal welfare laws.<sup>21</sup>”*

Among the key specific targets for addressing the Commission’s work plan, are:<sup>22</sup>

- ensuring that the proposals for delivering the European Green Deal are adopted by the end of this parliamentary term;
- reaching an agreement on the Fit for 55 packages;
- adoption of ambitious packages addressing climate change, transport emissions and carbon removal certification, ambient air and water quality, the circular economy (in particular, packaging, micro/plastics, right to repair, and end-of-life vehicles), and biodiversity;
- achieving affordable and sustainable energy, including scaling up the green hydrogen economy;
- reducing waste and its environmental impact (with a focus on food and textiles);
- overhauling the EU’s animal welfare laws;
- proposing new legislation on genomic techniques;
- proposing “after consultations with key stakeholders. . . a targeted revision of the legislation on the registration, evaluation and authorisation of chemicals (REACH)

<sup>21</sup>European Commission [13].

<sup>22</sup>Communication COM(2022) 548 final [5], p. 5-7.

with the aim of securing European competitive advantages and innovation by promoting sustainable chemicals, simplifying and streamlining the regulatory process, reducing burden and protecting human health and the environment”.

All the topics indicated are, indeed, relevant and pressing. Nonetheless, the nodal point under discussion here is how daring and proportional to the size and complexity of the problems these ambitions are. If one takes plastics and chemicals as examples, delays can easily be perceived.

The needed revision<sup>23</sup> of the REACH regulation was announced for the end of 2022, as part of the Commission’s strategy. Now having been postponed to the last quarter of 2023, means that it is foreseen on the eve of the parliament’s elections. For the most important environmental NGOs, this is a declaration of ‘game over’, since “no complex reform has ever been completed in such a short period of time”.<sup>24</sup>

The regulation of plastics, above and beyond the implications of postponements in the regulation of chemicals,<sup>25</sup> faces different implementation hurdles. During the first year of the COVID pandemic, the EU signalled its intentions to push forward restrictive regulation on plastics and not bowing to industry pressure. The European Commission held firm in the face of lobbying by the plastics converters’ trade body, which wanted to delay its implementation by at least a year.<sup>26</sup> Guaranteeing implementation, however, proves to be a much harder endeavour. For example, the guidance on the application<sup>27</sup> of the Single-Use Plastics Directive (SUPD) was released with an eleven-month delay. Most Member States are late with national implementation of extended producer responsibilities schemes. However, although transpositions have been delayed, an assessment in September 2022 (one year after the transposition deadline) has shown that most Member States are on track to implement the SUPD.<sup>28</sup> It is just the beginning, still, it is an unprecedented type of regulation, especially with a united front, so any positive result can be seen with optimism.

### 3 Final remarks

Crisis moments put priorities to test and may pressure environmental protection, even in the European Union, where the topic is always counted as a priority, and which is commonly known as a leader on the most current topics of environmental protection. The brief sample collected here demonstrates that the difficulties and attempted solutions are, indeed, of complex nature. The current status of implementation of most EU environmental law themes is far from what is desirable, and both national and regional resistance of various natures still pose difficult obstacles.

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<sup>23</sup>See, e.g., *Stockholm University Baltic Sea Centre* [26].

<sup>24</sup>*Vela* [29], *Foote* [15].

<sup>25</sup>See *Cortat Simonetti Goncalves* [8], *UN* [27].

<sup>26</sup>*Santos Silva, Cortat Simonetti Goncalves* [24]. See also *Simon* [25].

<sup>27</sup>*Commission Guidelines* [3].

<sup>28</sup>*Copello, Haut, Mongodin* [6].

It must never be forgotten that, unless they are implemented, “policy objectives and legal obligations will remain no more than good advice”.<sup>29</sup> Undoubtedly, these are times to dare. Unfortunately, the EU and its potential and desire to push forward the environmental agenda is still too similar to the educated Prufrock and his reluctance to believe that it is possible to conquer the beloved woman.

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## Declarations

**Competing Interests** The authors declare no competing interests.

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