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# Climate Emergency: Law, Policy, and Adjudication in the EU



*9-10 May 2023, Lund*



## Conference Summary

The conference ‘Climate Emergency: Law, Policy, and Adjudication in the EU’ was held in Lund on 9-10 May 2023, organized co-jointly by the EU Forum of Judges for the Environment (EUFJE) and Lund University with the support of the Lund Centre for European Studies (CFE) and the Association of Foreign Affairs (UPF).

The organizing committee of this conference was composed of Prof. Luc Lavrysen (President of the EU Forum of Judges for the Environment; President of Belgian Constitutional Court), Prof. Xavier Groussot (Professor of EU Law, Lund University), Prof. Sanja Bogojevic (Professor of Law, Oxford University; Visiting Professor of Environmental law, Lund University), and Dr. Meng Zhang (Postdoctoral Fellow in Climate Law, LUSEM, Lund University).



The main purpose of this conference was to better understand the legal implications of the climate emergency. As is well-known, in 2019, the European Parliament declared a global ‘climate and environmental emergency’. In the subsequent years, the EU has pledged to reduce 55% greenhouse gas emissions by 2030 and achieve climate neutrality by 2050, as laid out in the European Green Deal. Alongside legislative initiatives, climate litigation is ever-increasing across Europe, often led by civil society and NGOs, and employing a variety of legal arguments against both private and public actors to spur climate action. This shows a wide range of different actors – courts, policymakers, industrial sectors, and civil society – engaged with climate action in the face of climate emergency.

Particularly, EU’s climate ambition forms a natural part of Sweden’s climate package but, as for any Member State, this is translated into a particular, here Nordic, legal culture. Via the unique opportunity that Sweden hosts the EU presidency in 2023, this conference in Lund

aimed to reflect on key questions surrounding climate emergency and climate litigation in Europe. What are the legal implications of climate emergency for EU law, policy and adjudication? What role do civil society and NGOs play in this regard? What is the legal impact on private as well as public actors?



To figure those challenging questions out, this conference invited policy makers (Mr. Diederik Samsom, Head of Cabinet of Executive Vice-President of the European Commission Frans Timmermans), judges (Ms. Eleanor Sharpston, Former Advocate-General, Court of Justice of the EU; Mr. Frank Clarke, Former Chief Justice of Ireland; Ms. Natalia Kobylarz, Senior Lawyer, European Court of Human Rights; Ms. Larisa Alwin, Amsterdam Court of Appeal, Netherlands; and Prof. Christina Olsen Lundh, Judge, District Court of Vänersborg, the Land and Environment Court, Sweden); NGOs (Ms. Anna Rogalska Hedlund, Ms. Ida Edling, and Ms. Greta Frisk: organization Aurora in Sweden); National Human Rights Institutions (Ms. Brittis Edman, Swedish National Human Rights Institution; Ms. Jenny Sandvig and Ms. Hannah Cecilie Brænden, Norway’s National Human Rights Institution), and leading academics (Prof. Claire Dupont, Chair of the Scientific Committee, European Environment Agency; Dr. Åsa Romson, Swedish Environmental Research Institute; Prof. Jonas Ebbesson, Stockholm University; Prof. Lars J Nilsson, Member of the European Scientific Advisory Board on Climate Change; and Prof. Carl Dalhammar, Lund University) for inspiring and enlightening discussions.





Following the opening and welcome speeches delivered by Prof. Per Mickwitz (Pro Vice-Chancellor of Lund University), Prof. Jörgen Hettne (Director of the Lund University Centre for European Studies), and Prof. Luc Lavrysen, the conference included a keynote speech session and a round table discussion session on the first day, as well as three different thematic sessions on the second day. The thematic session I focused on the climate adjudication in the EU from the perspective of courts. The thematic session II discussed effects and implications of EU climate litigation, law and policy on the climate actions from energy-intensive industries. The thematic session III highlighted the role of civil society and grassroots activists in climate litigation, law and policy.



To briefly summarize lessons learned from this conference, there are some take-home pointers including that what counts as an ‘emergency’ has multiple legal meanings and we should be careful with its use. Moreover, participants and panelists discussed the need for ‘transformation’ – not only in an economic but also societal and legal sense – to ensure climate neutrality and considered who are the relevant participants in bringing about this transformation. Here, special attention was paid to lawmakers and courts. Particularly, with regard to the latter, this conference also discussed at length its role as ‘dialogue-enabler’ between different courts (eg. ECtHR and CJEU but dialogue with national courts and also further afield), as well as with lawmaker and litigants.

It is also worth noting that this conference is a Lund University Europe Day (May 9) Event through the unique opportunity that Sweden is hosting the EU presidency. The conference is not the end of the journey but the beginning of a new chapter in the battle against climate issues. More importantly, this conference demonstrated a solid step that accelerates a renewed momentum for joint efforts from multidimensional actors in the EU – policymakers, courts, private sectors, and civil society – in the ambitious transition towards a climate-neutrality EU!







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## **Climate Emergency: Law, Policy, and Adjudication in the EU**

### **Members of the EUFJE 2023 Lund Conference Organizing Committee:**

- **Prof. Luc Lavrysen:** President of the EU Forum of Judges for the Environment; President of Belgian Constitutional Court
- **Prof. Xavier Groussot:** Professor of EU Law, Lund University
- **Prof. Sanja Bogojevic:** Professor of Law, Oxford University; Visiting Professor of Environmental law, Lund University
- **Dr. Meng Zhang:** Postdoctoral Fellow in Climate Law, LUSEM, Lund University
- **Contact:**

Should you have any questions with regard to this event, please do not hesitate to contact Dr. Meng Zhang: [meng.zhang@har.lu.se](mailto:meng.zhang@har.lu.se)





# Programme

**Day 1: 9 May 2023, Tuesday**

**Auditorium Pufendorfsalen, Faculty of Law, Lund University**

13:00 – 13:30 **Registration and coffee**

13:30 – 14:00 **Welcome address**

- **Prof. Per Mickwitz:** Pro Vice-Chancellor of Lund University; Former Chair of the Scientific Committee, European Environment Agency
- **Prof. Jörgen Hettne:** Director of the Lund University Centre for European Studies
- **Prof. Luc Lavrysen:** President of the EU Forum of Judges for the Environment; President of Belgian Constitutional Court

14:00 – 15:50 **Keynote Speeches**

**Chair: Prof. Xavier Groussot, Lund University**

- **Mr. Diederik Samsom:** Head of Cabinet of Executive Vice-President of the European Commission Frans Timmermans  
*(Pre-recorded video speech: 15 mins)*
- **Prof. Claire Dupont:** Research Professor of Climate Governance, Ghent University; Chair of the Scientific Committee, European Environment Agency  
*(Virtual speech: 15 mins)*
- **Dr. Åsa Romson:** Swedish Environmental Research Institute; Former Deputy Prime Minister and Former Minister for the Environment of Sweden  
*Based on the legal request for urgent climate transition – what's the role of law in implementing climate policy reforms? Some suggestions for further research (20 mins+ Q&A 20 mins)*
- **Prof. Jonas Ebbesson:** Professor of Environmental Law, Stockholm University; Former Chair of the Compliance Committee of the Aarhus Convention  
*Multi-level law in climate litigation: the interaction of international, EU and national law (20 mins+ Q&A 20 mins)*

15:50 – 16:20 **Coffee Break**

16:20 – 18:00 **Round Table Discussion**

**Chair: Prof. Sanja Bogojevic, Lund/Oxford University**

- **keynote speakers: Dr. Åsa Romson, Prof. Jonas Ebbesson**
- **Discussant: Ms. Eleanor Sharpston, Ms. Jenny Sandvig, Ms. Anna Rogalska Hedlund**

19:00 **Welcome Dinner<sup>1</sup>**

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<sup>1</sup> Please note the welcome dinner is an event for speakers, panelists, and organizers of the conference only.



**Day 2: 10 May 2023, Wednesday**

**Auditorium Pufendorfsalen, Faculty of Law, Lund University**

08:30 – 10:10 **Thematic Session I** ‘Perspective from the courts: adjudicating climate change, law and policy in the EU’

**Chair: Prof. Luc Lavrysen, EUFJE**

- **Ms. Eleanor Sharpston**, Former Advocate-General, Court of Justice of the EU  
*Using courts to enforce environmental objectives - how far does "success" depend on the powers that you give them? (15 mins)*
- **Mr. Frank Clarke**, Former Chief Justice of Ireland  
*Climate Law and the Separation of Powers (15 mins)*
- **Ms. Natalia Kobylarz**, Senior Lawyer, European Court of Human Rights  
*Climate Change Litigation Relevant Case-law of the EctHR (15 mins)*
- **Ms. Larisa Alwin**, Judge, Amsterdam Court of Appeal (*Judge, Royal Dutch Shell Case*), Netherlands  
*Climate Related Cases – Dutch Case Law (15 mins)*

Panel Discussion and Q&A: 40 mins

10:10 – 10:30 **Coffee Break**

10:30 – 12:00 **Thematic Session II** ‘Implications to industrial sectors: effects of EU climate litigation, law and policy on the climate actions from energy-intensive industries’

**Chair: Prof. Xavier Groussot, Lund University**

- **Prof. Christina Olsen Lundh**: Associate professor of environmental law, University of Gothenburg; Judge, District Court of Vänersborg, the Land and Environment Court  
*Swedish court climate and the climate (15 mins)*
- **Prof. Lars J Nilsson**: Professor, Climate and energy policy, LTH, Lund University; Member of the European Scientific Advisory Board on Climate Change  
*Industrial decarbonization – future prospects and policy implications (15 mins)*
- **Prof. Carl Dalhammar**: Associate Professor, Environmental law and policy, IIIIEE, Lund University  
*The emerging European legal framework for products, supply chains, and green industrial policy (15 min)*

Panel Discussion and Q&A: 40 mins





12:00 – 13:00 **Lunch Break**

13:00 – 14:45 **Thematic Session III: Perspective from civil society: the role of civil society and grassroots activists in climate litigation, law and policy**

**Auditorium Telaris, Faculty of Law, Lund University**

**Chair: Dr. Matthew Scott, Raoul Wallenberg Institute**

- **Ms. Brittis Edman**, Swedish National Human Rights Institution  
*Climate litigation and the role of national human rights institutions (15 mins)*
- **Ms. Jenny Sandvig**, Policy Director; **Ms. Hannah Cecilie Brænden**, Advisor, Norway's National Human Rights Institution  
*Third part interventions by National Human Rights Institutions in climate cases, including the European Court of Human Rights (20 mins)*
- **Ms. Anna Rogalska Hedlund**, Legal Counsel for the Aurora Climate Case in Sweden (Presentation together with **Ms. Ida Edling** and **Ms. Greta Frisk**, Aurora Members)  
*The marriage of climate law and human rights law in strategic litigation (20 mins)*

Panel Discussion and Q&A: 50 mins

14:45 – 15:00 **Concluding and Closing Remarks**

Prof. Luc Lavrysen, EUFJE

Prof. Xavier Groussot, Lund University

Prof. Sanja Bogojevic, Lund/Oxford University;

15:00 – 16:00 **Closing Fika**



## List of Speakers of the Conference

**Mr. Diederik Samsom:** Head of Cabinet of Executive Vice-President of the European Commission Frans Timmermans

**Dr. Åsa Romson:** Former Deputy Prime Minister and Former Minister for the Environment of Sweden

**Prof. Claire Dupont:** Research Professor of Climate Governance, Ghent University;  
Chair of the Scientific Committee, European Environment Agency

**Prof. Jonas Ebbesson:** Professor of Environmental Law, Stockholm University; Former  
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**Ms. Hannah Cecilie Brænden:** Advisor, Norway's National Human Rights Institution

**Ms. Anna Rogalska Hedlund:** Legal Counsel for the organisation Aurora in Sweden



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# Presentations





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## **Pre-recorded Video Keynote Speech from *Mr. Diederik Samsom*:**

Head of Cabinet of Executive Vice-President of the European Commission Frans Timmermans



For the full version of Mr. Diederik Samsom's keynote speech video,  
please visit the EC Audiovisual Library via the link below:

[https://audiovisual.ec.europa.eu/en/preview/https:%2F%2Fec-vod.fl.freecaster.net%2F03%2F240503%2FLR\\_I240503EN1W.mp4](https://audiovisual.ec.europa.eu/en/preview/https:%2F%2Fec-vod.fl.freecaster.net%2F03%2F240503%2FLR_I240503EN1W.mp4)

Claire Dupont

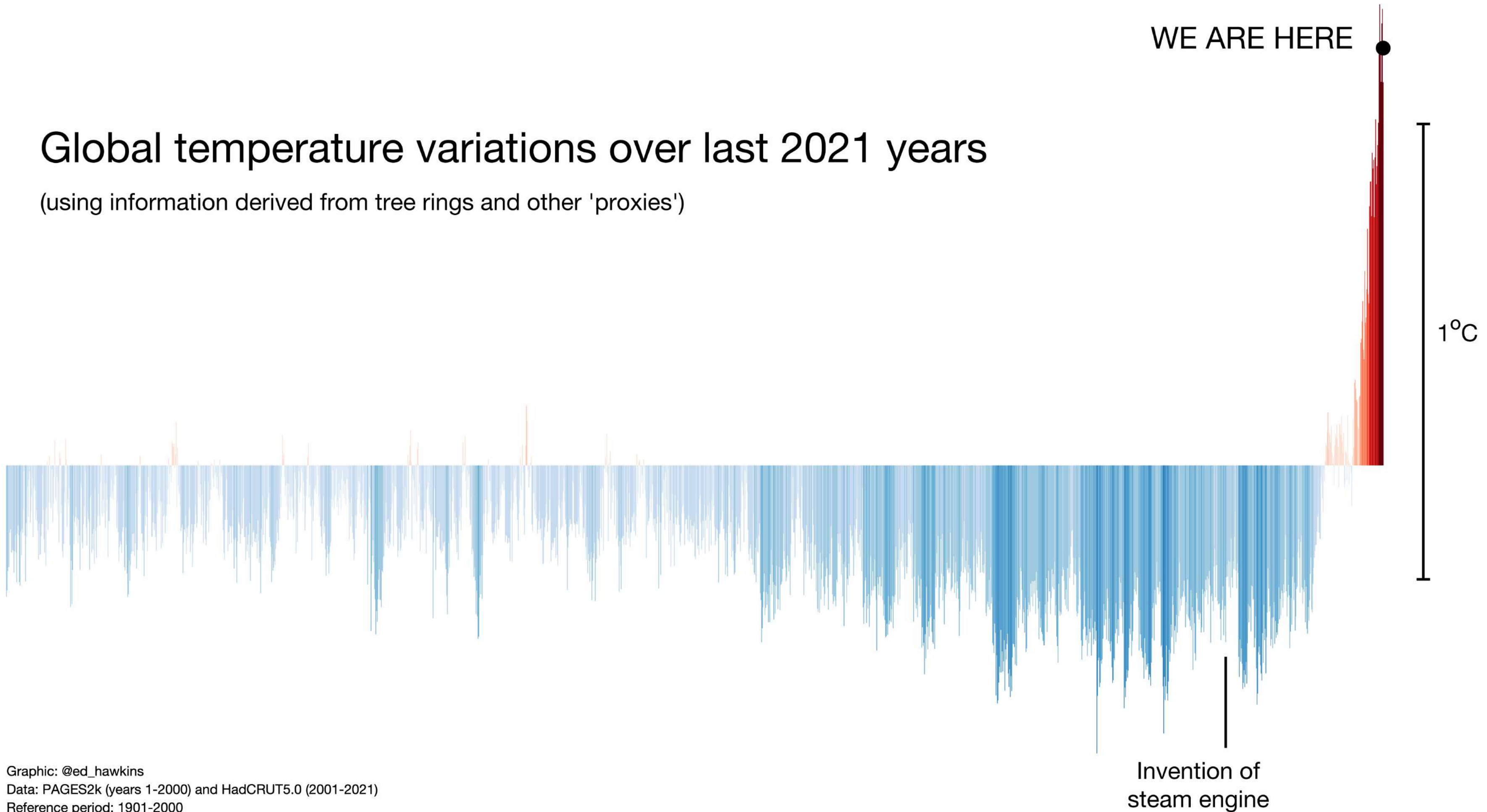
# GOVERNING EUROPE'S CLIMATE TRANSITION



**Co-funded by  
the European Union**

# Global temperature variations over last 2021 years

(using information derived from tree rings and other 'proxies')





# KEY MESSAGE

Transformation is inevitable

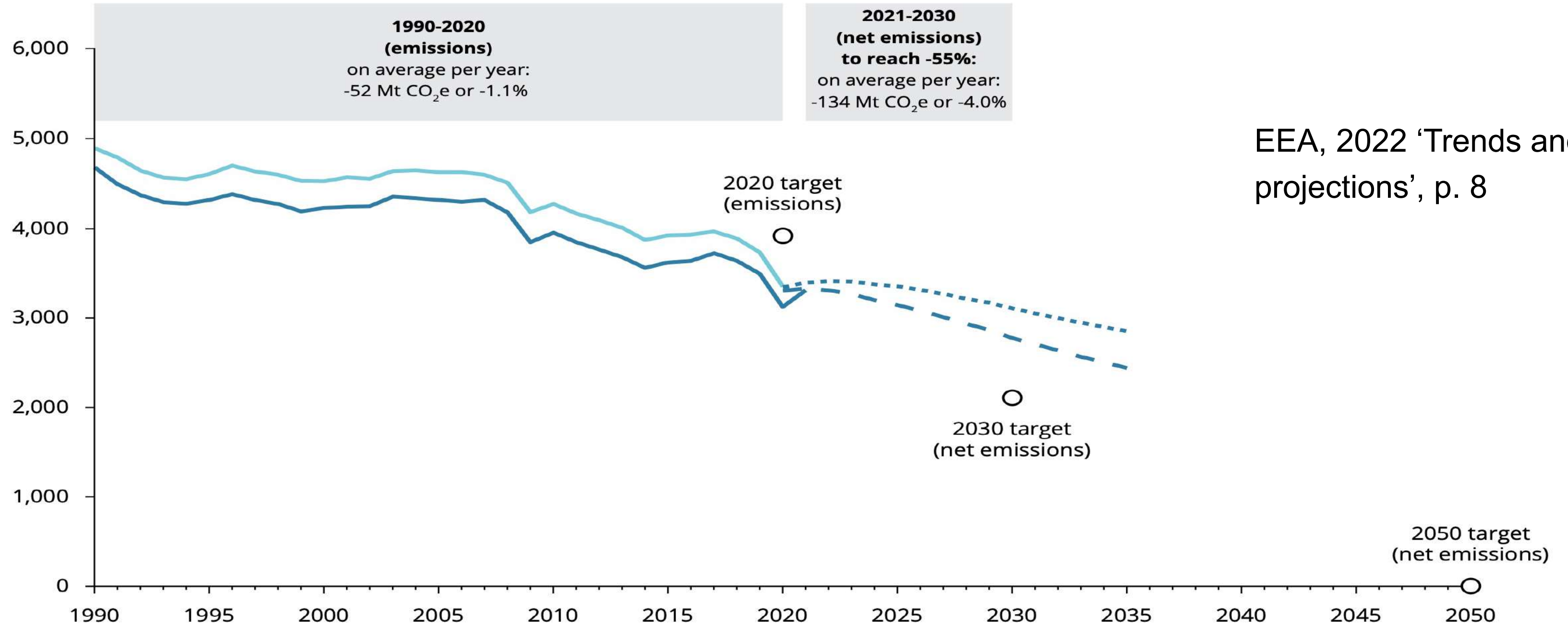
# UNDERSTANDING THE EU'S RESPONSE

1. EU's climate transition efforts
2. Governance leading to the European Green Deal
3. Politics, policy and governance during crises
4. Concluding reflections

# EU'S CLIMATE TRANSITION EFFORTS

**Figure ES.1 Historical trends and future projections for greenhouse gas emissions**

Million tonnes of CO<sub>2</sub> equivalent (Mt CO<sub>2</sub>e)



EEA, 2022 'Trends and projections', p. 8

- Historical greenhouse gas emissions without land use, land use change and forestry (LULUCF)
- Historical greenhouse gas emissions with LULUCF
- ... Projections with existing measures (WEM) with LULUCF
- . Projections with additional measures (WAM) with LULUCF



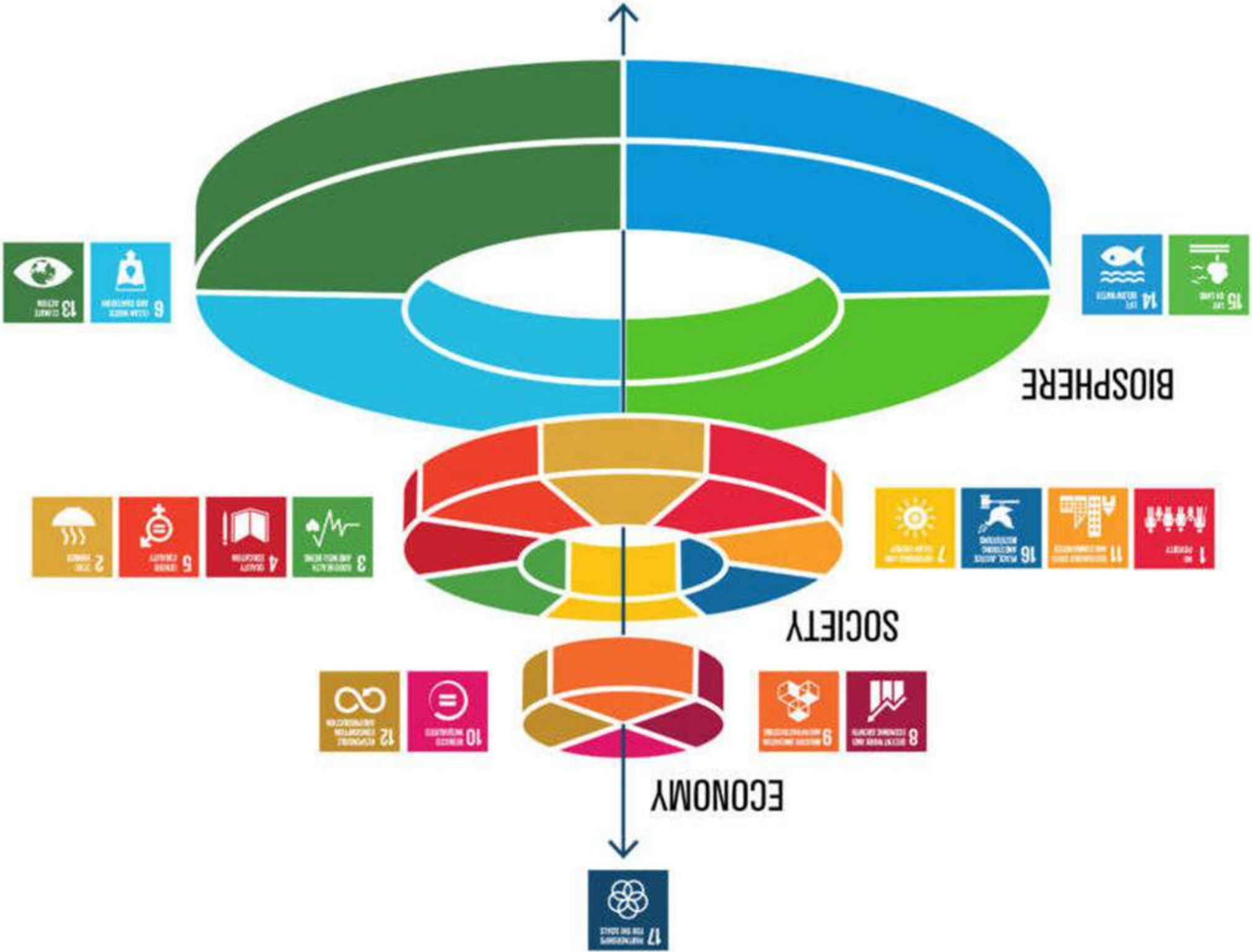
# GOVERNANCE

- EU competence: environment, climate, energy
  - Sustainable development
- Pattern of action: targets + implementing measures
- Ever more complex and interacting packages of policy measures:
  - Cross-sectoral
  - Multi-level
  - Internal/external
  - Global/international



# SEEING A DIFFERENT ORDER

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# GOVERNANCE: IMPLEMENTING MEASURES

- European Green Deal measures
- View progress via legislative train tool of the European Parliament:
  - <https://www.europarl.europa.eu/legislative-train/schedule>

Departure Demands (1)

Departures (61)

Departed (31)

On hold (3)

Expected Arrivals (13)

Arrived (36)

Derailed (4)



# GOVERNANCE: IMPLEMENTING MEASURES

## ‘Fit for 55’ package (mitigation)

- Renewable energy
- Energy efficiency
- Emissions trading
- Methane emissions in energy
- CO<sub>2</sub> emissions from cars and vans
- Carbon border adjustment mechanism
- Social climate fund
- ...

## Nature measures (adaptation)

- Adaptation strategy
- Nature Restoration
- Soil health
- ...

# CRISES

- Crises (political, economic) tend to reveal gaps in social justice, equality
- Past crises have refocused attention away from climate measures, BUT
- EGD has proven resilient through crisis
  - COVID and energy crises responses
  - EGD as central framework
  - Increased targets
  - Politics, geopolitics

# CONCLUDING REFLECTIONS

- Transformation is inevitable
- Success, scale, speed and scope of the (managed) transformation depends on implementation across sectors, and levels of governance
- Transformation anyway variable per region, per sector, per locality but all expected to contribute

# THANK YOU!

**Prof Claire Dupont**  
**Dept of Public Governance**  
**Ghent University**

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**@Cladupont**

Global warming stripes 1850-2020,  
credit @edhawkins



# Investigating the role of regulation and the legislation processes in climate transition

**Åsa Romson**, juris doctor

Senior researcher in climate law and policy at IVL Swedish Environmental Research Institute,  
Lecturer in Environmental Law at Stockholm University, Department of Law

## Talking points

1. The legal request for urgent climate transition – Paris agreement and national climate laws
2. Legal barriers to climate transition at various scales
3. Co-creating climate policies and collaborative governance - effecting legislative processes
4. Monitoring effectiveness of climate regulation
5. Suggestions for the research?

A large, stylized graphic of a leafy branch in shades of blue and purple, positioned behind the main title text.

# **Multi-level law in climate litigation: the interaction of international, EU and national law**

## ***Climate Emergency: Law, Policy and Adjudication in the EU***

**Conference organised by EUFJE and Lund University  
Lund 9 May 2023**

*Jonas Ebbesson*

Department of Law, Stockholm University



# Climate litigation around the World

## *How many, where and about what?*

- Ca 2,000 cases, in >40 countries (incl >1,400 in the USA)
- Also before int'l and regional courts and tribunals, such as ECtHR, IACtHR, ISDSs & UNHR Committee
- Both re: mitigation and adaptation
- Plaintiffs: NGOs, individuals, states and corporations
- Defendants: states and corporations

## *Why:*

- The notion of emergency and swift transformation
- Compliance with and enforcement of the law
- Compensation for harm
- Concretise abstract and complex contexts
- Emphasise human rights





# Climate lawsuits against states – 1

## *Appeals and reviews of administrative decisions*

- *United Kingdom* 2020, planning decision re: Heathrow
- *Ireland* 2020, national climate plan quashed
- *Norway* 2020, oil drilling in the Arctic; now at ECtHR

## *Civil action*

- *Pakistan* 2015, order regarding adaptation
- *Colombia* 2018, order including on climate
- *Netherlands* 2019, order, reduction GHG
- *France* (Adm. Court) 2021, order, reduction GHG
- *Belgium* pending, declaration, breach duty of care
- *Sweden* pending, declaration/order reduction GHG

## *Constitutional complaint*

- *Germany* (Constitutional Court 2021), order to change Climate Act





# Climate lawsuits against states – 2

## European and international fora

### *European Court of Justice*

- *Numerous rulings re climate, not least on EU ETS*

### *European Court of Human Rights*

- *Duarte Agostinho et al v Portugal plus 32 states*
- *Klimaseniorinnen v Switzerland (heard)*
- *Carême v France (heard)*
- *Plus others pending*

### *Investor- state arbitration tribunals*

- *LWE v the Netherlands*

### *Also courts and tribunals outside Europe*

- ---





# Climate lawsuits against corporations

## *Appeals and reviews of administrative decisions*

- *Kenya* 2019, permit coal power plant withdrawn
- *Sweden* 2020, permit for Sweden's largest oil refinery

## **Civil Action**

- *Germany*, pending (*Lliuya v RWE*)
- *Netherlands*, pending (*Milieudefensie et al v Royal Dutch Shell*)
- *France, Argentina, Nigeria...* re: oil companies





## Multi-level law in climate litigation

- *Spatial metaphors in law*: level, upper, lower, supreme, superior, sovereign
- *Multi-level governance*, a well established concept
- *Now, multi-level law*:
  - International (global, regional) law
  - Supranational (EU) law
  - Transnational law
  - National law
  - Sub-national law
- Integration/-action these levels (and scales) of law
- ***Laws of different levels appear more frequently in climate litigation than in other environmental litigation***





## Multi-level law in climate litigation

- *Plaintiffs integrate* international law and EU law in climate litigation in national fora
- *National courts* apply and refer to international treaties and other documents, and EU legislation
- *National courts* refer to international courts and tribunals, and the EUCJ
- *National law* is interpreted in light of (or conformity with) international and EU law
- *International human rights law* is construed in light of international climate change law – by national courts and ... possibly by ECtHR (cf. *Duarte Agostinho*)



## **Multi-level law in climate litigation: relevant acts/docs of international law**

- UNFCCC and Paris Agreement
- European Convention on Human Rights
- Aarhus Convention
- UNGA Resolution 76/300: The Human Right to a Clean, Healthy and Sustainable Development
- UNGA Resolution 70/1: Agenda 2030 and the Sustainable Development Goals
- UN Guidelines on Business and Human Rights
- OECD Guidelines for Multinational Enterprises



## Multi-level law in climate litigation: relevant acts of EU law

- Regulation 2021/1119 “European Climate Law”
- Regulation 2018/842 on Binding Emissions Reductions by Member States
- Regulation 2018/1999 on Governance of the Energy Union and Climate Action
- Directive 2003/87 on EU Emission Trading
- Directive 2018/2001 on Energy from Renewable Sources



# The notion of *emergency* in climate litigation – 1

## *The notion of emergency...*

- ... is reflected in quite a few court climate cases.
- ... engages spatial aspects: levels and scales of law
- ... engages time

## *The notion of emergency and concerns for courts:*

- When examining obligations and responsibilities of states/companies in the global context
- When examining obligations and responsibilities of states/companies in time
- When handling and managing cases



# The notion of *emergency* in climate litigation – 2

## *When examining obligations and responsibilities of states/companies in the global context*

- States and corporations have obligations even if their contributions/shares are minimal in the global context,
- *Urgenda case* (Court of Appeal): “[T]he State cannot solve this problem on its own. However, this does not release the State from its obligation to take measures in its territory, within its capabilities”
- *Neubauer case* (Constitutional Court):  
The fact that “no state can resolve ...climate change on its own ... does not invalidate the national obligation to take climate action.”





## The notion of *emergency* in climate litigation – 3

### *When examining obligations and responsibilities of states/companies in time*

- Time is essential, and states and corporations must not postpone their obligations, responsibilities and action
- *Notre Affaire à Tous* case (Adm. Court): the court ordered immediate and concrete action so as not to postpone measures
- *Neubauer case* (Constitutional Court): “[O]ne generation must not be allowed to consume large portions of the CO2 budget ... if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom.”



# The notion of *emergency* in climate litigation – 4

## *When handling and managing cases*

- While courts should consider the *emergency* when examining obligations/responsibilities of states and corporations, so as not to postpone measures to the future...
- Courts should *not compromise* on due process or judicial fairness for the sake of *emergency*.
- Cf. the *Duarte Agostinho case* (ECtHR)
  - General claims against 33 states, without detailing
  - No specified grounds/circumstances
  - Domestic remedies not used/exhausted
  - This case should be dismissed



# Multi-level law in climate litigation

## *Conclusions*

- Climate litigation engages multi-level law
- Climate litigation is international law from below
- ECHR is either directly applied or key for interpretation
- UNFCCC/Paris Agreement essential for HR provisions
- ECHR and Aarhus Convention key for access to justice
- UNGA resolutions and guidelines also matter
- Courts should consider *emergency* and scales: obligations/responsibilities in the global context
- Courts should consider *emergency* and time: obligations/responsibilities not to postpone action
- But *emergency* is *not* an excuse/reason for courts to compromise on due process and judicial fairness





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# **CLIMATE CHANGE AND THE SEPERATION OF POWERS**

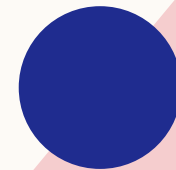
Frank Clarke

Lund 2023



# IS THERE AN ISSUE?

- Not now but there may be in the future
- It may be wise to begin to address this before it becomes a potential problem
- Issues are not always best addressed when they arise during a crisis or at times of very heightened tension



# RIGHTS-BASED LITIGATION – A MAJOR RESOURCE

- Over the past 100 years or so most democracies have developed courts systems where courts can determine and enforce rights
- IMPORTANTLY Governments - to a very large extent - regard those decisions as binding not just in theory but in practice
- BUT this is not a given – some recent worrying developments
- Losing or significantly diminishing the effectiveness of this resource (rights-based litigation) would be a hugely detrimental development
- HOWEVER not using it effectively renders it of little value. Where is the balance?

# THE BOUNDARIES OF LITIGATION

- The legal basis for litigation depends to some extent on the relevant legal order
- However the extent of the competence of courts is not always clearly defined
- Where Constitutions or Laws clearly confer competence difficulties unlikely
- BUT where the court itself defines the boundaries there may be real disputes

# CLIMATE LITIGATION TO DATE

- Mainly at the highest level – general obligations on Governments to act by reference to temperature rise and/or emission reduction targets
- Fairly clear legal bases to be found in Constitutions, National Laws or International Treaties (insofar as applicable in national law )
- But as Climate Litigation continues to develop we are seeing a widening of the types of cases – some private law litigation
- However the real problem for Climate Litigation may come when there are disputes about where the burden of meeting climate objectives is to lie.

# THE FUTURE



We know the main areas where action is needed such as fossil fuel energy production, transport and intensive farming

More detailed plans and measures will lead to disputes as to the share of the burden that each sector should bear

Such disputes may well end up in the courts

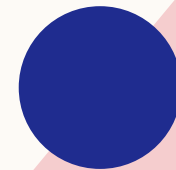


# THE FUTURE

Sectoral disputes may well give rise to real issues around the proper role of the court

Even more so when these measures get down to granular details

It is one thing to say that a Government must do more or be more specific but requiring (say) agriculture to do more



# THE ISSUE

We know that when individuals or groups are unhappy with Government plans the question of resort to the courts will often be considered

Where the issues are highly controversial and of widespread interest the legal basis for the court's decisions will come into greater focus

Where that legal basis is clear (either in a Constitution, a National Law or a Treaty Obligation which applies in National Law ) then it is unlikely to prove to be a serious problem

Where the Court has to decide the limits of its own competence against vague and unclear text - the risk of truly damaging controversy is real

My suggestion is that we need to debate these issues now and provide as much clarity in advance of where the boundaries of the court's remit lies

**THANK YOU**





EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

# CLIMATE CHANGE LITIGATION RELEVANT CASE-LAW OF THE ECtHR

Natalia Kobylarz  
Senior Lawyer, Registry ECtHR  
[natalia.kobylarz@echr.coe.int](mailto:natalia.kobylarz@echr.coe.int)

A teal circle is centered on a white background. Inside the circle, the word "INVENTORY" is written in a teal, uppercase, sans-serif font.

INVENTORY



Duarte Agostinho & Others v.  
Portugal and 32 other States



**Duarte Agostinho & Others v.  
Portugal and 32 other States**



**Verein KlimaSeniorinnen  
& Others v. Switzerland**



**Duarte Agostinho & Others v.  
Portugal and 32 other States**



**Verein KlimaSeniorinnen  
& Others v. Switzerland**



**Carême v. France**



**Duarte Agostinho & Others v.  
Portugal and 32 other States**



**Verein KlimaSeniorinnen  
& Others v. Switzerland**



**Carême v. France**



**Müllner v. Austria**



Duarte Agostinho & Others v.  
Portugal and 32 other States



Verein KlimaSeniorinnen  
& Others v. Switzerland



Carême v. France



Müllner v. Austria



Greenpeace Nordic & Others  
v. Norway



Duarte Agostinho & Others v.  
Portugal and 32 other States



Verein KlimaSeniorinnen  
& Others v. Switzerland



Carême v. France



Müllner v. Austria



Greenpeace Nordic & Others  
v. Norway



Soubeste and others v.  
Austria & 11 other States





Duarte Agostinho & Others v.  
Portugal and 32 other States



Verein KlimaSeniorinnen  
& Others v. Switzerland



Engels and 8 Others v.  
Germany



Carême v. France



Soubeste and others v.  
Austria & 11 other States



Müllner v. Austria



Greenpeace Nordic & Others  
v. Norway



+ 5 other applications v. Italy, UK and Norway

Duarte Agostinho & Others v. Portugal and 32 other States



Verein KlimaSeniorinnen & Others v. Switzerland



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Soubeste and others v. Austria & 11 other States



Müllner v. Austria



Greenpeace Nordic & Others v. Norway



- + 3 other applications v. Italy and Norway, adjourned
- + 2 other applications v. UK, rejected

Intro: 07/09/2020  
Comm: 13/11/2020  
Relinquished to GC



Intro: 26/11/2020  
Comm: 17/03/2021  
Relinquished to GC



Intro: 28/01/2021  
Relinquished to GC



Intro: 08/04/2021  
Adjourned



Intro: 15/06/2021  
Comm: 16/12/2021  
Adjourned



Intro: 21/06/2022  
Adjourned



Intro: 28/09/2022  
Adjourned



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Intro: 15/06/2021  
Comm: 16/12/2021  
Adjourned



Intro: 28/09/2022  
Adjourned



Intro: 21/06/2022  
Adjourned



ECHR ISSUES RAISED  
BY CLIMATE CHANGE  
CASES



Direct victim (past or ongoing harm)				
Potential victim (risk assessment)				
NGO as victim				
Cause-and-effect extraterritoriality				
Attribution of State responsibility				
Exhaustion of domestic remedies				
Material causality	(wild fires/ droughts/ heatwaves)	(heatwaves)	(petrol licences)	(rising sea)
Access to a court				
Severity of HR impact				
Discrimination & Intergenerational equity				
Right to a safe and healthy environment				
General measures				





RELEVANT CASE-LAW

Person, NGO, group  
of individuals  
affected by harm  
to his/her/its human rights  
**Article 34 ECHR**

No actio popularis

Direct victim  
Affected by past or ongoing harm

Potential victim  
(1) having a valid and personal interest in seeing the  
situation brought to an end [modification of conduct at  
risk of being directly affected by legislation]

Potential victim  
(2) where substantial grounds have been shown for  
believing that the person  
would face a real risk of being subjected to hr harm

**ENVIR TEST: serious specific & imminent danger**

**IMMIG TEST: foreseeable consequences of removal in light  
of personal circumstances or general situation of violence**  
F.G. v. Sweden [GC], 2016

**INCIDENTS TEST: regular occurrence of incidents** Stoicescu  
v. Romania, 2011



A legal entity (NGO) cannot rely on rights  
that are inherently attributable to natural persons only  
- right to life, private life, dignity

Yusufeli İlcesini Guzellestirme Yasatma Kultur Varliklarini Koruma  
Derneği v. Turkey (dec.), no. 37857/14, § 43, 2021; Greenpeace e. V.  
and Others v. Germany (dec.), 2009

An eNGO can in principle rely on Art 10 that prohibits  
restrictions on access to information where it is  
instrumental for the NGO's exercise of its right to freedom  
impart information

BureStop 55 and Others v. France, 2021

The result of the proceedings must be directly decisive for  
the right.

While the purpose of the proceedings was to protect the general  
interest, the "dispute" also had a sufficient link with a "right" to which and  
eNGO could claim to be entitled as a legal entity for Art 6 § 1.

BureStop 55 and Others v. France, 2021

Legal standing is only granted to persons that were  
parties to the procedure - either in person or,  
exceptionally through an NGO

Bursa Barosu Başkanlığı and Others v. Turkey, 2018; L'Erablère  
A.S.B.L. v. Belgium, 2009 ; Gorraiz Lizarraga and Others v. Spain, 2004

### Past or ongoing harm

Băcilă v. Romania, 2010, § 64; Fadeyeva v. Russia, 2005, § 68; Guerra and Others v. Italy, 1998, § 57

### Risk of future harm

Athanassoglou v. Switzerland [GC], 2000, § 51; Balmer-Schafroth e.a v. Switzerland [GC], 1997, § 40

Article 2: States must mitigate (natural) environmental hazards where they are **imminent and clearly identifiable**.

Budayeva and Others v. Russia, 2008, § 137

a recurring calamity affecting a distinct area developed for human habitation or use

M. Özel and Others v. Turkey, 2015, § 171

Article 8: **direct and immediate link**, required.

Ivan Atanasov v. Bulgaria, 2010, § 66

Article 8: **sufficiently close link** between ongoing or future env. and HR harm, based on: record of past accidents; official documents; EIA; cumulation of factors such as statistics and reports on *general* causation

Cordella and Others v. Italy, 2019, §§ 163-165; Dzemyuk v. Ukraine, 2014, §§ 81 and 84; Hardy and Maile v. the UK, 2012, §§ 189 and 192; Dubetska and Others v. Ukraine, 2011, §§ 111-123; Tătar v. Romania, 2009, §§ 97 and 106; Fadeyeva v. Russia, 2005, § 88; Taşkın and Others v. Turkey, 2004, § 113



### Causation on the basis of probabilities ?

Fadeyeva v. Russia, 2005, §§ 79 and 88

Quantifying the effects of environmental harm on a person could be impossible because of the influence of other factors.

Cordella and Others v. Italy, 2019, § 160

Article 2: situations where death has occurred & situations where, although an applicant survived, there clearly existed a risk to his/her life (near-death situations).

Kolyadenko and Others v. Russia, 2012, § 160

Chains of events that were triggered by a negligent act and led to loss of life may fall under Article 2.

Dodov v. Bulgaria, 2008, § 70 and Öneriyıldız v. Turkey [GC], 2004, § 94

Article 8: Specific impacts on health where those are alleged by the applicant

Tătar v. Romania, 2009, §§ 105-111; Calancea and Others v Moldova (dec.), 2018, § 31.

### General health vulnerability

Fadeyeva v. Russia, 2005, § 88; Jugheli and Others v. Georgia, 2017, §; Cordella and Others v. Italy, 2019, §105

### Well-being & quality of private life (nuisance)

Hatton and Others v. UK, 2003, § 96; Di Sarno and Others v. Italy, 2012, § 108; Dubetska and Others v. Ukraine, 2011, §§ 106 and 112; Deés v. Hungary, 2010, § 22, Ivan Atanasov v. Bulgaria, 2010, § 76; López Ostra, 1994; § 51

State's jurisdictional competence under Article 1 is primarily territorial, but the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries.

In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to particular facts.

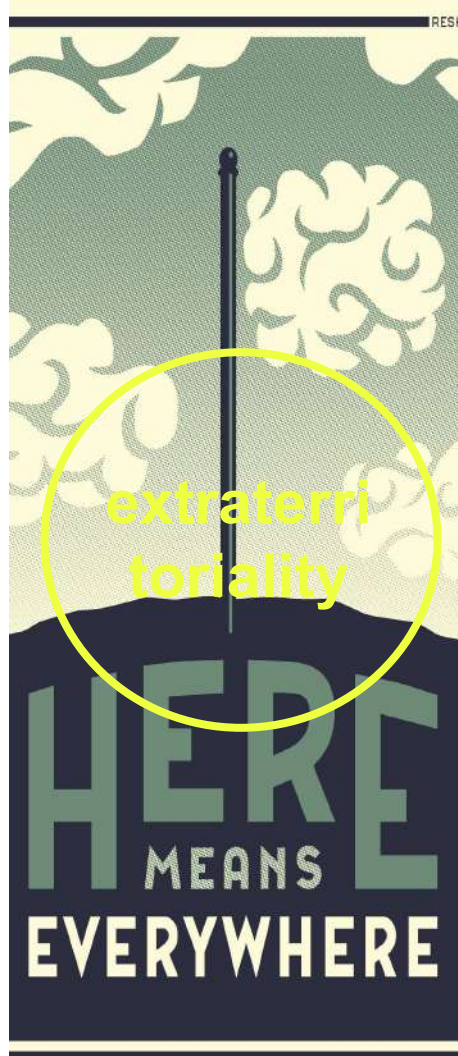
Article 1, *M.N. and Others v. Belgium (dec.)* [GC], 2020, §§ 97-98 and 101-02; *Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 130-32; *Al-Skeini and Others*, 2011, § 132

The two main criteria governing the exercise of extraterritorial jurisdiction:

“effective control” by the State over an area outside its territory (**spatial concept of jurisdiction**)

“State agent authority and control” over individuals (**personal concept of jurisdiction**)

*Ukraine and the Netherlands v. Russia (dec.)* [GC], 2022, §§ 560, 565-72; *Georgia v. Russia (II)* [GC], 2021, § 115; *Al-Skeini and Others*, 2011, §§ 133-40



Ext. responsibility cannot, in principle, stem from an instantaneous extraterritorial act, but extraterritorial jurisdiction has been extended to situations arising from full and exclusive control that was continuous and uninterrupted.

*Medvedyev v. France*, [GC], 2010, § 66

Ext. responsibility can cover isolated and specific acts committed by State agents who exercise physical power and control over the victim in a situation of proximity.

*Carter v. Russia*, 2021, § 130; *Georgia v. Russia (II)*[GC], 2021, §§ 130-31

Ext. responsibility cannot extend to actions that occurred “in a context of chaos” during a military operation “in the active phase of hostilities” ...

*Georgia v. Russia (II) (dec)*, 2021 §§ 126-37; *Ukraine and the Netherlands v. Russia (dec.)* [GC], § 558

...unless it possible to pierce “the fog of war” in relation to particular incidents committed in the active phase of hostilities, provided that there is “clarity” as to the circumstances surrounding these incidents.

*Ukraine and the Netherlands v. Russia (dec.)* [GC], §§ 703-06

Ext. responsibility did not extend to co-financing of a project with a foreign State, that allegedly caused, environmental degradation.

*Zeynep Ahunbay and Others v. Turkey, Austria and Germany (dec.)*, 2016 § 94



**ECtHR**  
**Knowledge Sharing**  
**Environment**

<https://ks.echr.coe.int/web/echr-ks/environment>





## **Climate related cases – Dutch case law**





X / Tax Inspector

ECLI:NL:RBNHO:2023:783 District Court Noord Nederland 31/1/2023





Urgenda et al / Dutch State

ECLI:NL:HR:2019:2007 Dutch State Supreme Court 20 December 2019 (English version)

Provisionally enforceable order: limit the joint volume of Dutch annual greenhouse gas emissions, or have them limited, so that this volume will have reduced by at least 25% at the end of 2020 compared to the level of the year 1990



Milieudefensie et al / Royal Dutch Shell

ECLI:NL:RBDHA:2021:5339 District Court The Hague 26 May 2021

Provisionally enforceable order: reduce CO2 emissions of the Shell group's activities by net 45% at end 2030, relative to 2019, through the Shell group's corporate policy

- Obligation of result for the activities of the Shell group
- Significant best-efforts obligation with respect to the business relations of the Shell group, including the end-users



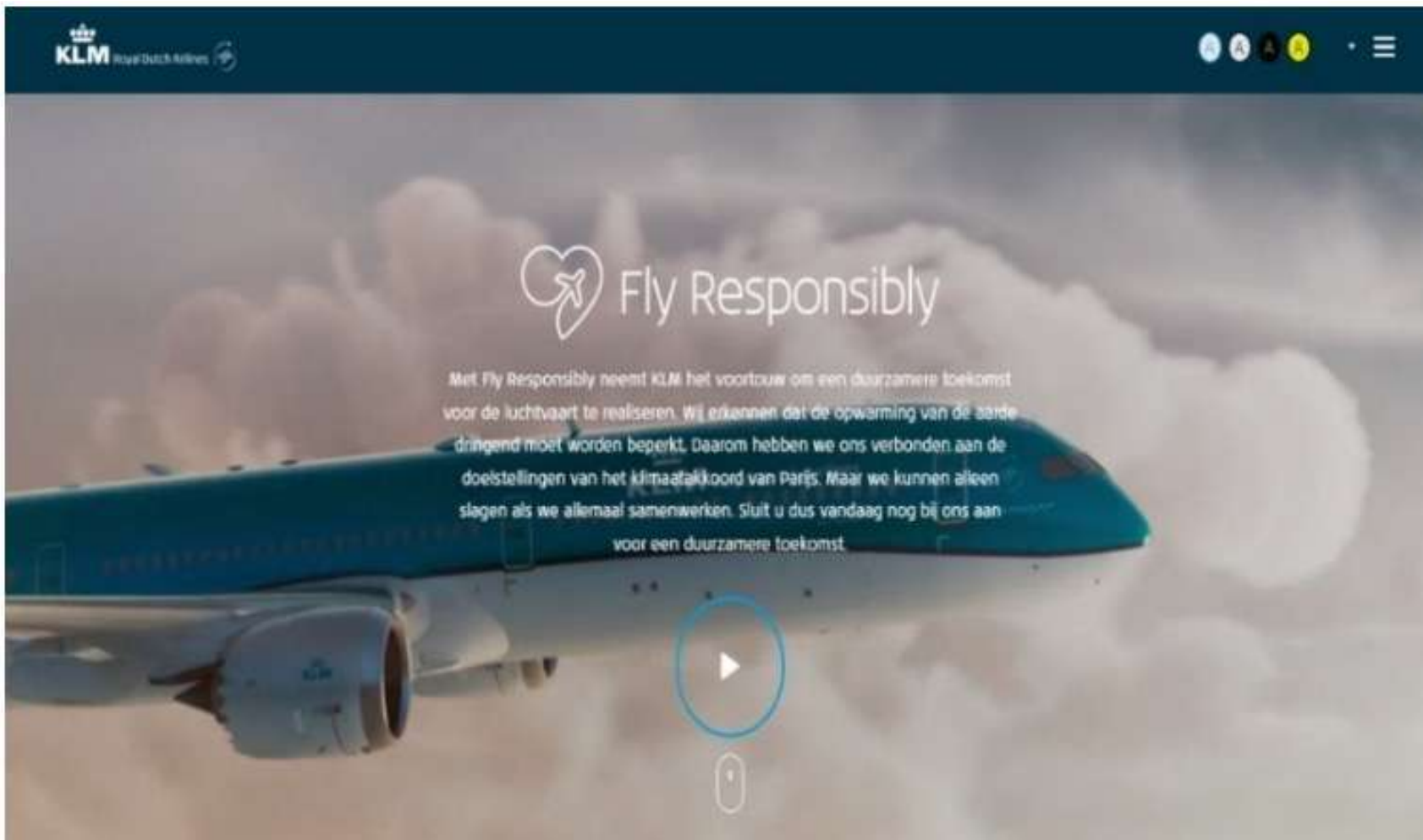


Upcoming: Greenpeace / Dutch State: Bonaire





Greenpeace / Dutch State  
ECLI:NL:RBDHA:2020:12440, District Court The Hague, 9 December 2020



Greenpeace / KLM case number C/13/719848 / HA ZA 22-524 District Court Amsterdam





ECLI:NL:RVS:2016:1227, ABRvS 4 May 2016  
ECLI:NL:RVS:2020:2621, ABRvS 4 November 2020  
ECLI:NL:RVS:2022:2736, ABRvS 21 September 2022



Milieudefensie / Wetterskip Fryslân  
ABRvS 15 september 2021, ECLI:NL:RVS:2021:2077





Mobilisation for the Environment et al / College of Deputies of the Province North Holland  
ECLI:NL:RBNHO:2021:4342, District Court



Uniper / Dutch State

ECLI:NL:RBDHA:2022:12653, District Court The Hague 30 November 2022







Christina Olsen Lundh

Senior Judge, head of division

Land- and environmental court, District Court of Vänersborg

Associate Professor in Environmental Law, Department of Law, University of Göteborg

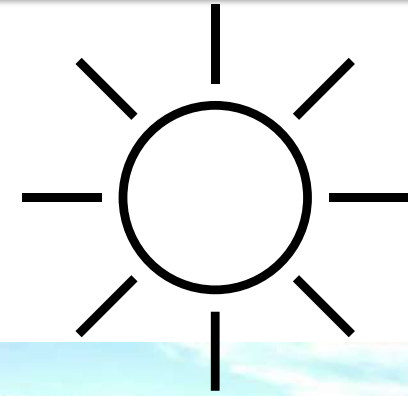
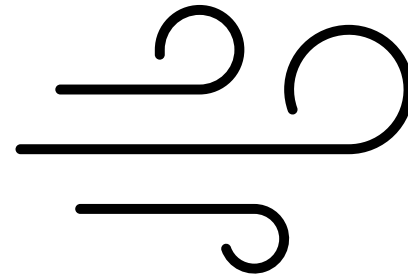
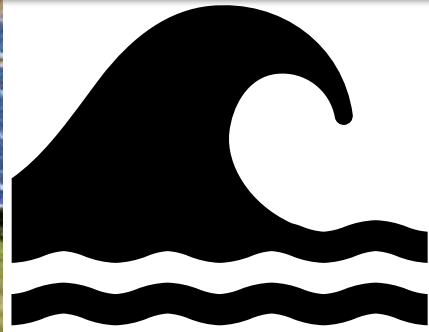


**VÄNERSBORGS TINGSRÄTT**

SVERIGES DOMSTOLAR



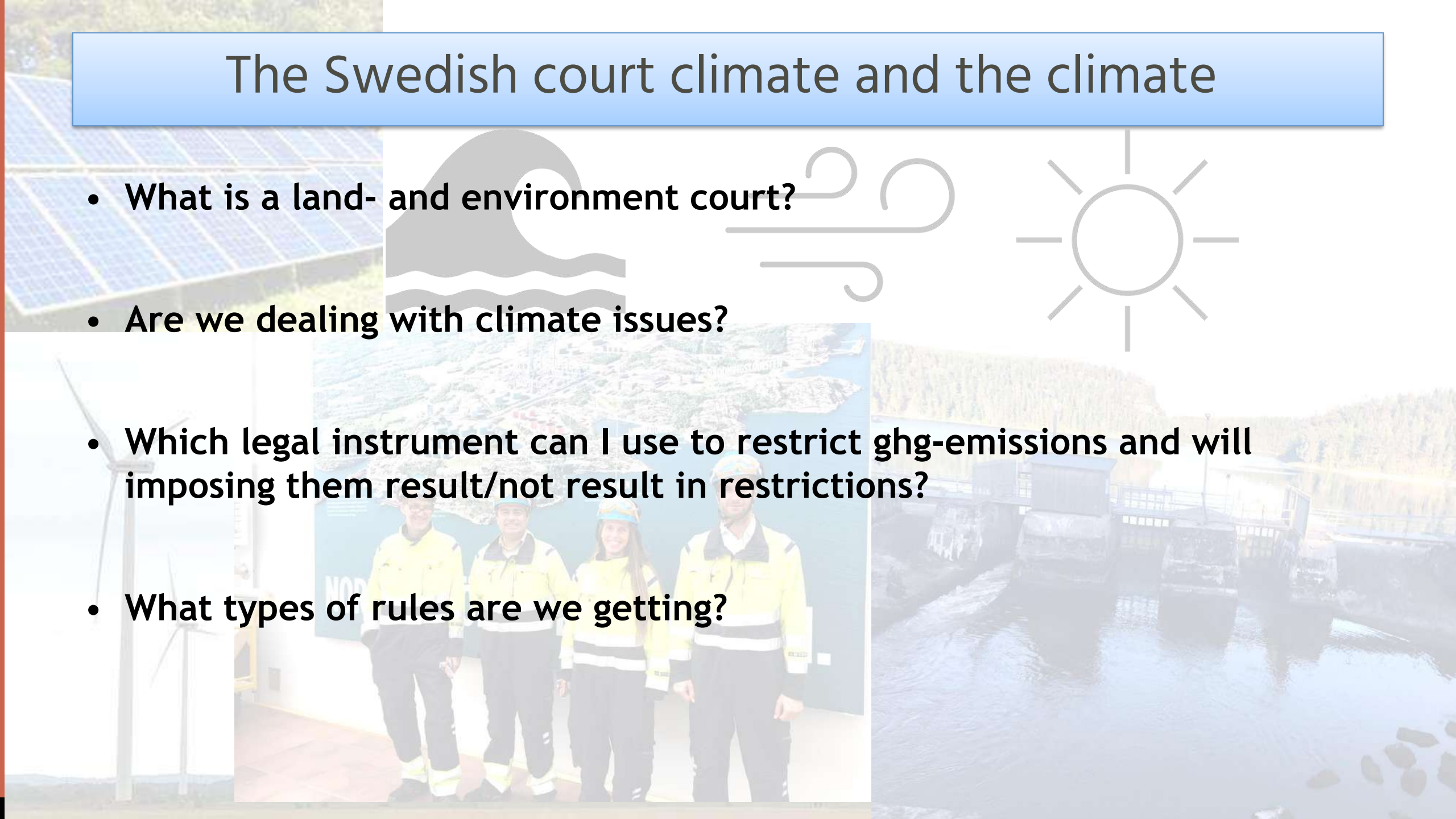
# The Swedish court climate and the climate





# The Swedish court climate and the climate

- What is a land- and environment court?
- Are we dealing with climate issues?
- Which legal instrument can I use to restrict ghg-emissions and will imposing them result/not result in restrictions?
- What types of rules are we getting?





# Land- and Environment Court



Mark och miljödomstolen ger Procestraff tillstånd att bygga ut raffinaderiet. Bild: Ronny B Nilsson

eter ▾ Lokalt  Sport ▾ SVT Play Barn



äteriets kostnadsfördelning här. Foto: SVT /

Environmental code  
Property formation act,  
Planning and building act  
Public Water Services act

Nyheter | Hylte

MÅNDAG 27 SEPTEMBER 2021

Kontak  
Isabel Bark, tel: 010-47

Miljö



Rådsmannen från Vänersborg, Christina Olsen Lundh, och domstolens tekniska råd Joen Morales förevisar reningsanläggningen för processvatten från fabriken. Bild: Lennart Hildingsson



Visa alla (2)

Camping stämmer kommun på  
19,5 miljoner

Publicerad 27 juli 2016



# Land- and E



Mark och mjölkdomstolen ger Preemräff tillstånd att bygga ut raffinaderiet. Bild: Ronny B Nilsson

eter  Lokalt  Sport  SVT Play Barn



äteriets kostnadsfördelning här. Foto: SVT /

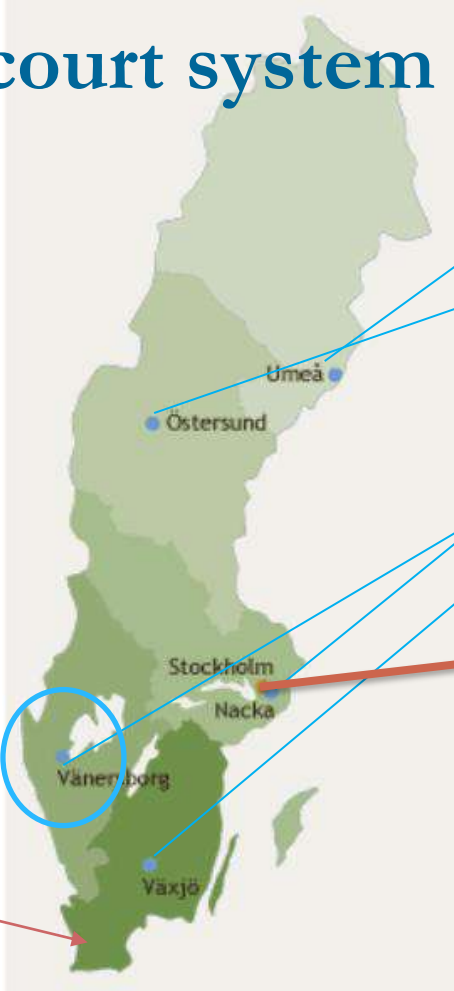


Rådmanen från Vänersborg, Christina Olsen Lundh, och domstolens tekniska råd Joen Morales förevisas reningsanläggningen för processvatten från fabriken.

Bild: Lennart Hildingsson



# Environmental cases in the Land- and Environment court system



Five land- and environment courts, situated at five district courts



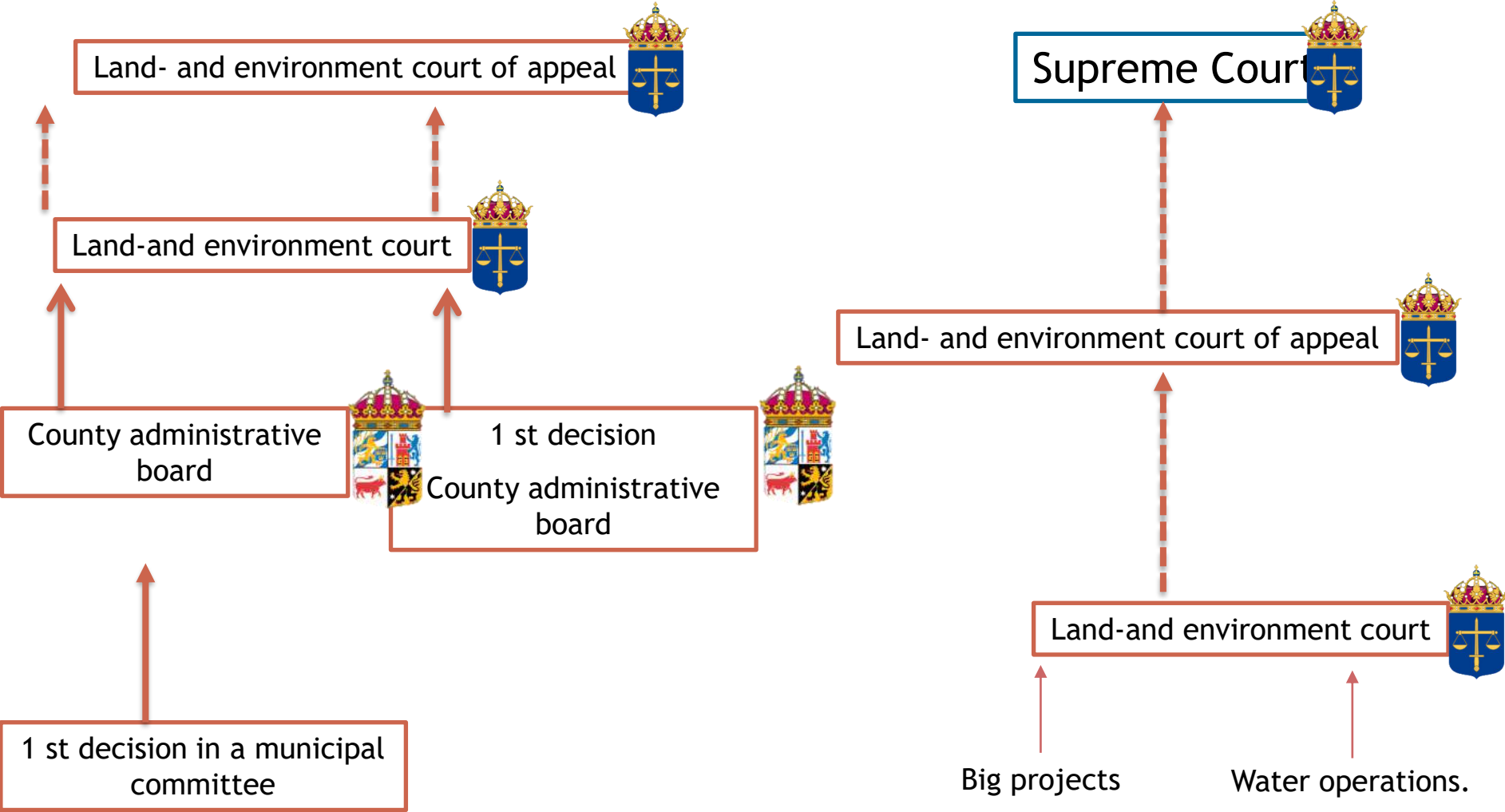
Land- and environment court of appeal



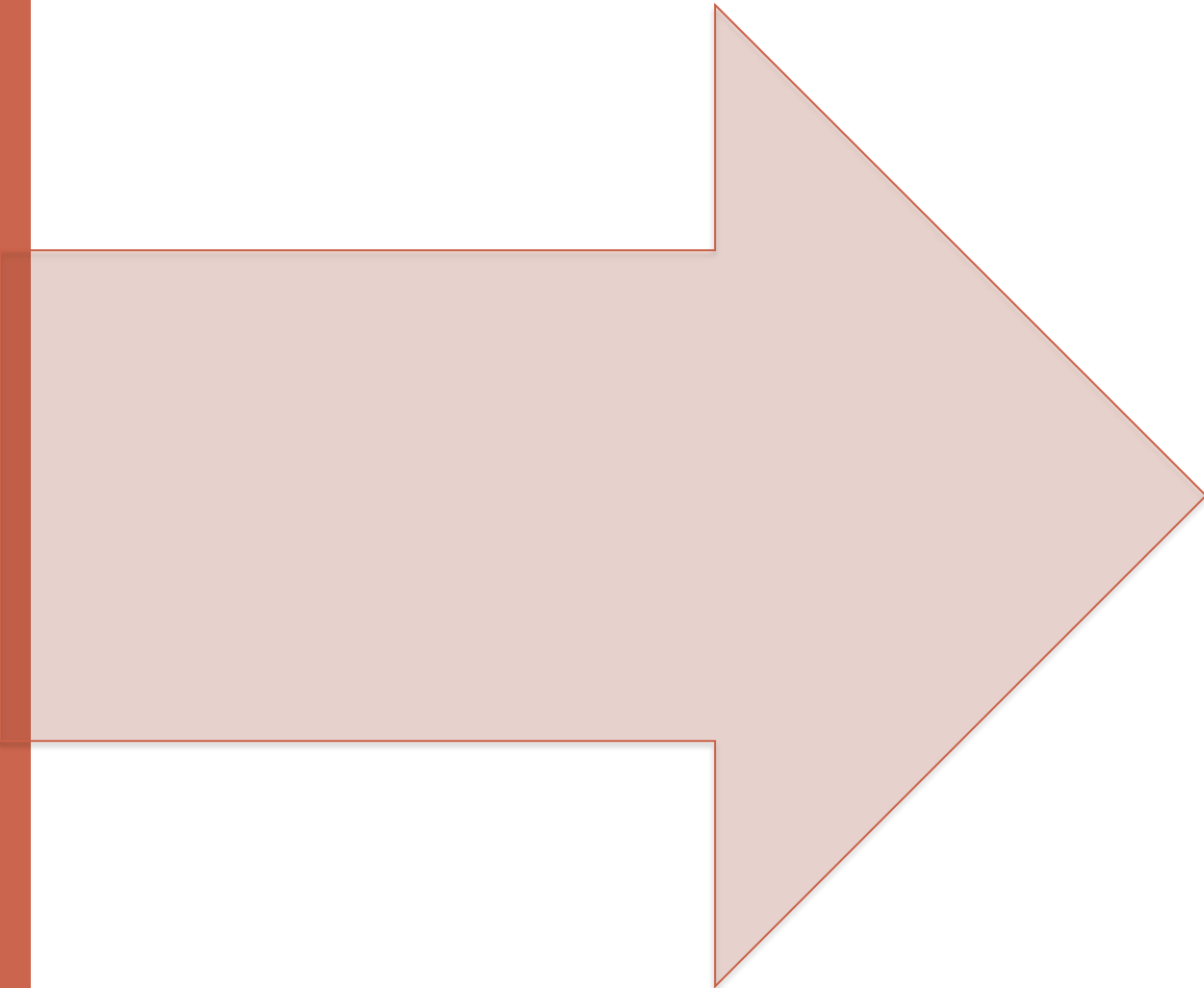
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# Environmental cases in the Land- and Environment court system



# Affecting GHG-emissions – which law to use?



# Affecting GHG-emissions – which law to use?

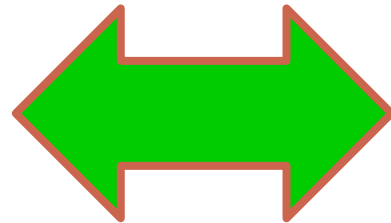
- Clear support to regulate emissions.
  - Environmental Code + preparatory work

**Resource management and eco-cycle principle**

SEC: Chapter 2 Section 5

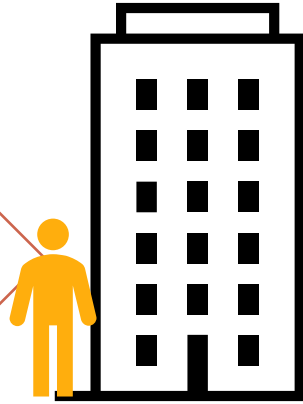
**Best Available Techniques**

SEC: Chapter 2 Section 3



**Municipality  
Environmental Board**

**Replace the oil-fired heating system on the property X with a heat source with little or no use of non-renewable energy sources within three years**



- It is reasonable to require a change from oil heating to a heat source based on renewable energy.
- (...) this choice is not unreasonable in economic terms.

**Even small businesses contribute to greenhouse gas emissions.**

**It can be concluded that the environmental benefit of the measure, despite the size of the business, is still considerable.**

The measure will pay for itself over time.

**The order cannot be considered unreasonable and the Board was justified in issuing the order.**

Land- and environment court of appeal

MÖD 2015:27





# Affecting GHG-emissions – which law to use?

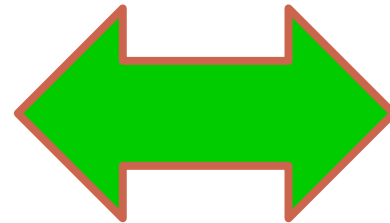
- Clear support to regulate emissions.
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**Resource management and eco-cycle principle**

SEC: Chapter 2 Section 5

**Best Available Techniques**

SEC: Chapter 2 Section 3



**Principle of proportionality**

SEC: Chapter 2 Section 7

# Affecting GHG-emissions – which law to use?



Installations covered by the EU ETS

EPA: A condition to ensure that the company uses fuel and other energy carriers that are better from a climate point of view in order to reduce the activity's contribution of greenhouse gas emissions from the emission sources that are not included in the EU's emissions trading system.

The County Administrative Board: Condition that the company shall actively work to replace fossil fuels in processes and for working machines and transport, with renewable fuels in order to reduce the consumption of finite natural resources.

Land- and environment court, Vänersborg M 2194-19,  
2020-05-06



As an important part of the EU's climate change programme, the EU has established an emissions trading scheme



Activity covered by the EU ETS may not be subject to conditions which, by regulating the amount of fossil fuel used, aim at limiting carbon dioxide emissions

Land- and environment court, Vänersborg M 2194-19,  
2020-05-06

‘installation’ means a stationary technical unit where one or more activities listed in Annex I are carried out **and any other directly associated activities** which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution

Land- and environment court, Vänersborg M 2194-19,  
2020-05-06



The purpose of the trading system is

diffi

Activities covered by the trading system is diffuse and changeable

Doubtful whether it is appropriate to prescribe conditions with the aim of regulating greenhouse gas emissions for the part of the company's activities that don't require a permit under the EU ETS

Land- and environment court, Vänersborg M 2194-19,  
2020-05-06

# Affecting GHG-emissions – which law to use?

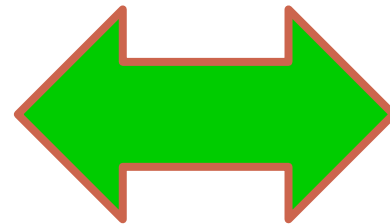
- Clear support to regulate emissions.
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**Resource management and eco-cycle principle**

SEC: Chapter 2 Section 5

**Best Available Techniques**

SEC: Chapter 2 Section 3



**Principle of proportionality**

SEC: Chapter 2 Section 7

**EU ETS**

- Limitation in time of the permit.

Land-and environment court



16 kap. 2 §  
Environmental code

Permit for the current, and changed (HVO), operations at the company's refinery. The permit was **limited in time**.

**HVO**  
**= Hydrogenated vegetable oil**

- Limitation in time of the permit.

MÖD M 11764-21 2022-06-01

Land-and environment court



Reason for time limit:

Future legislative proposals, etc. from the European Commission can provide guidance for how the transition to renewable production of fuels should best take place.

- Limitation in time of the permit.

MÖD M 11764-21 2022-06-01

Company:

The time limit in the licence should only relate to the annual throughput of crude oil and that no time limit should apply to the rest of the permit.



- Limitation in time of the permit.

MÖD 2013:39

**It is not reasonable that an individual operator can claim a limited natural resource to such an extent that it should be granted a perpetual licence.**

**When determining the duration of the licence, however, consideration must be given to the operator's conditions for long-term planning of the activity.**

# Affecting GHG-emissions – which law to use?

- Clear support to regulate emissions.
  - Environmental Code + preparatory work

Resource management and eco-cycle principle

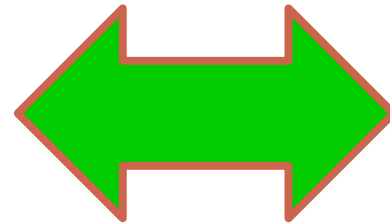
SEC: Chapter 2 Section 5

Best Available Techniques

SEC: Chapter 2 Section 3

Limitation in time

SEC: Chapter 16 Section 2



Principle of proportionality

SEC: Chapter 2 Section 7

EU ETS

Consideration for long-term planning of the activity

## Distribution between fossil/renewable raw materials

**EPA:**

In the event of a throughput of more than 4.8 million tonnes per year, from 2030 onwards and assuming that the HVO plants have been put into operation, the throughput of raw materials of other than fossil origin shall amount to at least 1.2 million tonnes per year.

**The  
Nature  
Conserva-  
tion  
Society**

Limit the amount of fossil raw materials to 3 million tonnes by 2030

## Distribution between fossil/renewable raw materials

- Forcing the company to increase the amount of renewable raw material or reduce the amount of fossil raw material from 2030: **In line with the overall objective of the Environmental Code**
- Significant limitation of the activities, with crucial importance for the type of products that the company can produce and place on the market.
- The company's activities are partly dependent on political decisions; it is difficult to oversee the consequences of such a regulation for the business.

**No clear support for the production volume of such fuels to be regulated separately**



# Affecting GHG-emissions – which law to use?

- Clear support to regulate emissions.
  - Environmental Code + preparatory work

Resource management and eco-cycle principle

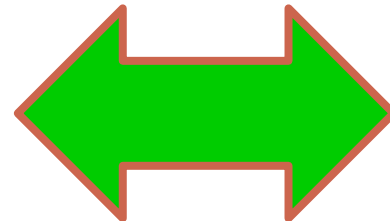
SEC: Chapter 2 Section 5

Best Available Techniques

SEC: Chapter 2 Section 3

Limitation in time

SEC: Chapter 16 Section 2



Principle of proportionality

SEC: Chapter 2 Section 7

EU ETS

Consideration for long-term planning of the activity



# Conditions proposed by the applicants

**Measures shall be taken progressively to a reasonable extent to improve the efficiency of energy use.** The measures are to be based on the company's energy survey, which reports on energy use and how it can be made more efficient.

**An energy management plan must be drawn up in consultation with the supervisory authority and submitted to the supervisory authority every four years, starting on 31 March 2024.**

## Conditions proposed by the applicants

The company shall **work towards** a transition to fossil-free production. The renewable raw materials that are used shall fulfil the criteria according to current Swedish sustainability legislation, linked to the Renewable Energy Directive (RED).



**Fairly uncontroversial to impose conditions on the basis of the Resource management and eco-cycle principle,**

# Affecting GHG-emissions – which law to use?

- Clear support to regulate emissions.
  - Environmental Code + preparatory work

Resource management and eco-cycle principle

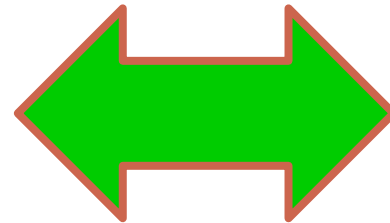
SEC: Chapter 2 Section 5

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Limitation in time

SEC: Chapter 16 Section 2



Principle of proportionality

SEC: Chapter 2 Section 7

EU ETS

Consideration for long-term planning of the activity

## Protection of species (habitats directive) and water framework directive

**Case C-461/13: Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive**

# What rules are we getting?

COUNCIL REGULATION (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy (entered into force 1 January 2023; validity is limited to 18 months, possible to extend, if necessary).

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020 (Critical Raw Materials Act)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (Net Zero Industry Act)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act)



- Activities that contribute to (...) should automatically be considered to constitute an overriding general interest in relation to the Birds, Water and Habitats Directives and that this assessment should not, as today, be made in the individual assessments.
- The permit-granting process for (...) shall not exceed 3 months.
- For the permit-granting process regarding (...) the absence of a reply by the relevant authorities or entities within 1 month following the application shall result in the permit being considered as granted (...)

# Permitting alternatives - transition towards a climate-neutral economy

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Thank you!



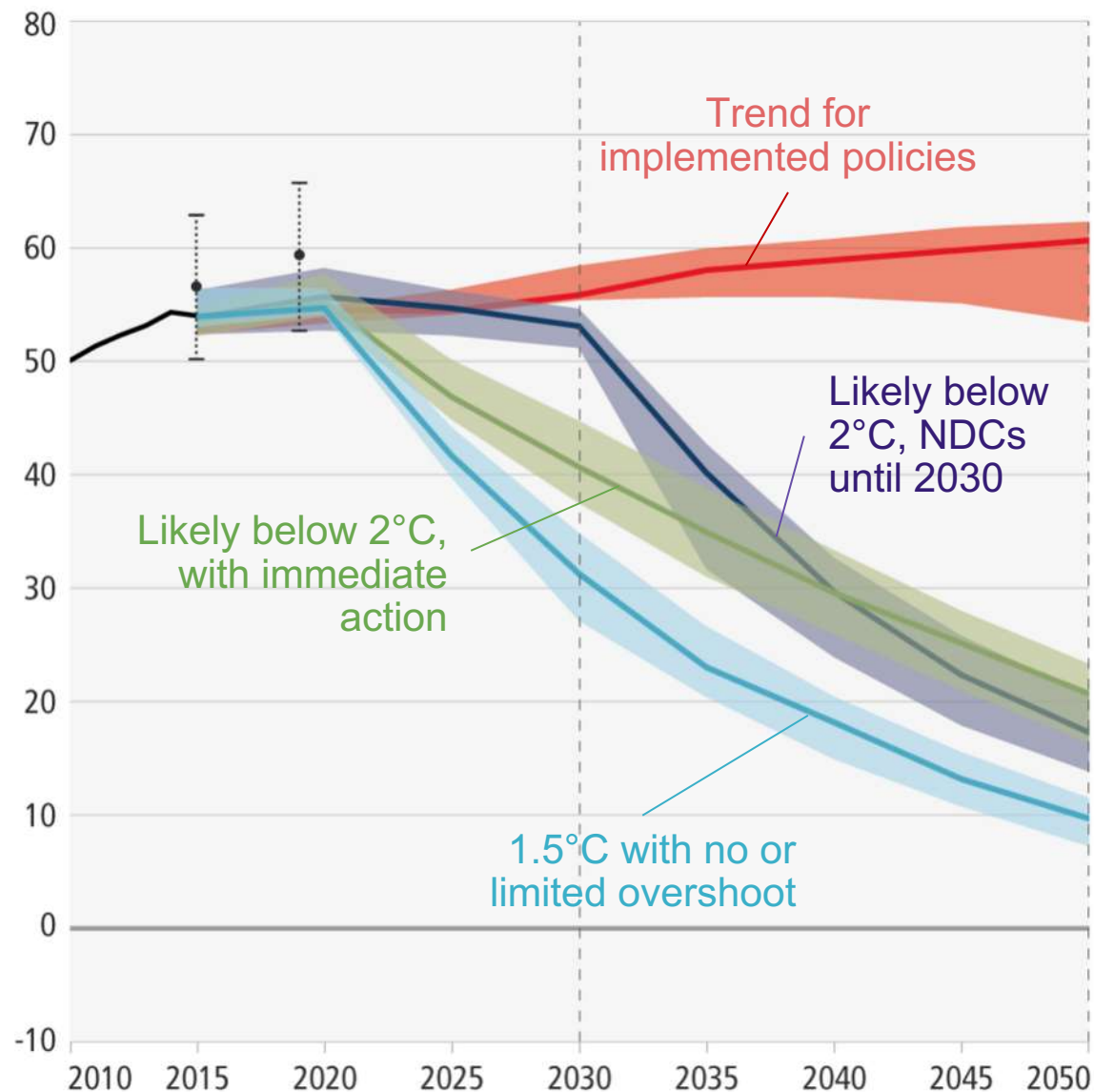


# Industrial decarbonization – future prospects and policy implications

LARS J. NILSSON, DEPT OF TECHNOLOGY AND SOCIETY, LUND UNIVERSITY

2023-05-10





## Limiting warming to 1.5 °C

- Global GHG emissions peak before 2025, reduced by 43% by 2030.
- Methane reduced by 34% by 2030

## Limiting warming to around 2°C

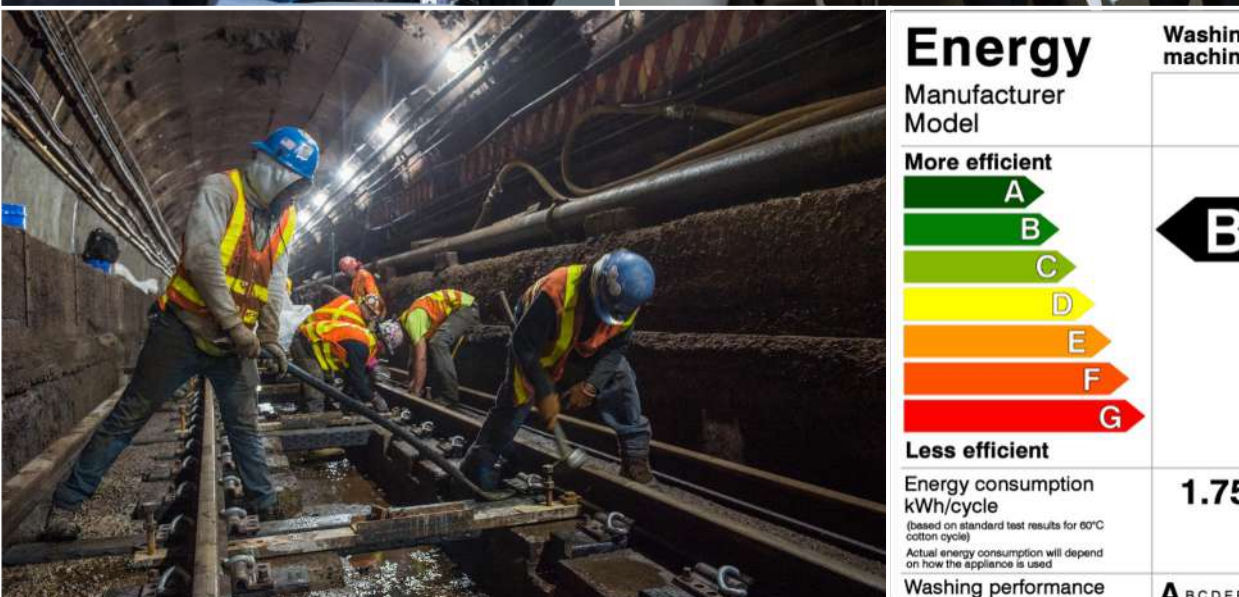
- Global GHG emissions peak before 2025, reduced by 27% by 2030.

*(based on IPCC-assessed scenarios)*

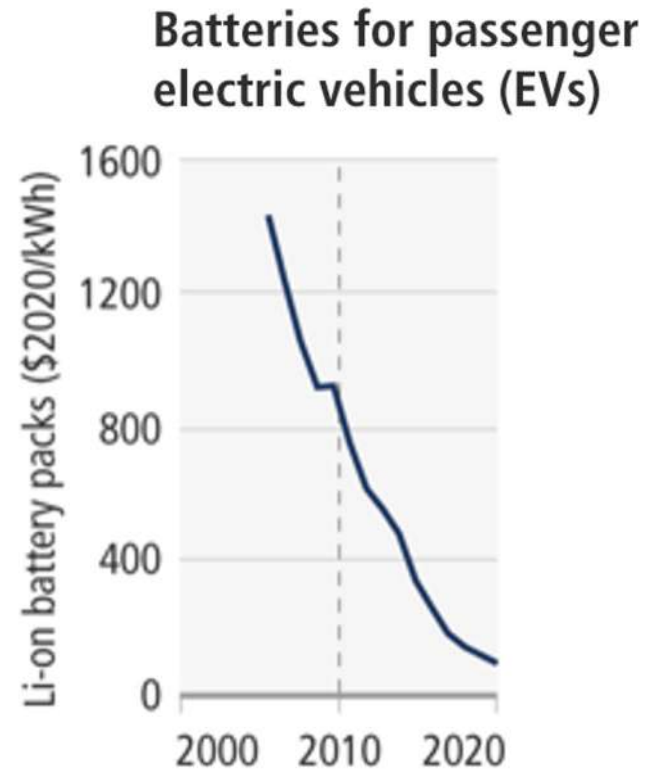
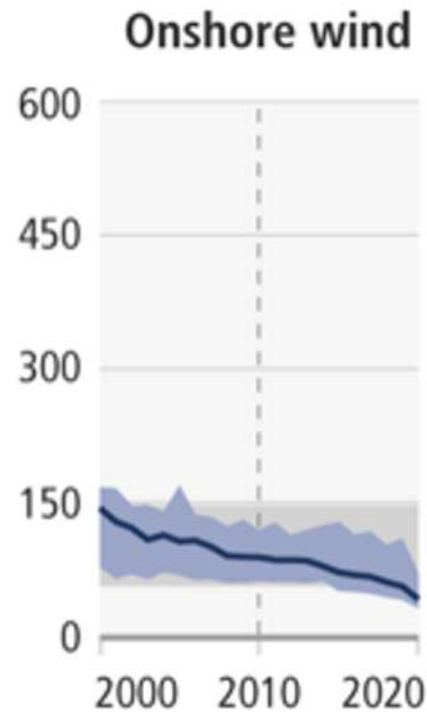
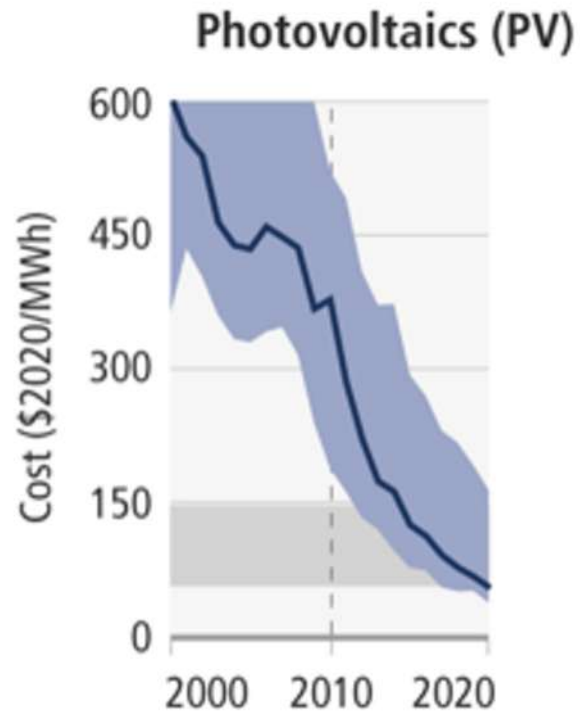


## Some positive signs

- Several countries show sustained emission reductions over time
- Climate policies are spreading across more countries
- Hundreds of cities and regions have adopted ambitious targets
- Many companies adopt targets and report emissions



[World Bank/Simone D. McCourtie, Dominic Chavez CC BY-NC-ND 2.0, Trent Reeves/MTA Construction & Development CC BY 2.0, IMF Photo/Tamara Merino CC BY-NC-ND 2.0, Olga Delawrence/Unsplash.]

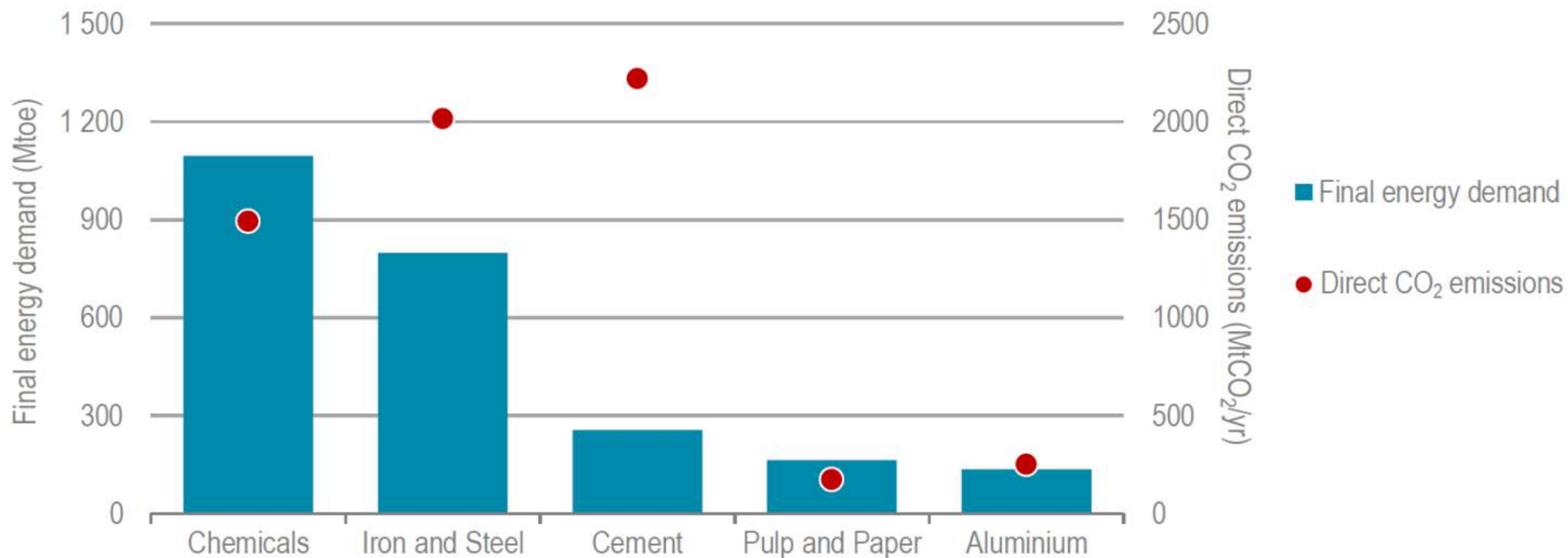


— Market cost

■ Fossil fuel cost (2020)

In some cases, costs for renewables have fallen below those of fossil fuels.

# Chemicals, steel and cement are 70 % of emissions



Asset intensive and long investment cycles

# Mitigation options

---

- Materials, service and product demand management
- Materials efficiency
- Circular material flows, recycling and industrial symbiosis
- Energy efficiency remains “first” also for fossil free industry
- Electrification and hydrogen
- Fossil free carbon feedstock (waste, biomass or air capture) (CCU)
- Carbon capture and storage (CCS)





Large  
technology  
shifts are  
required

Suddenly they  
happen

Pilot plant ready 2020  
First 100 % hydrogen reduction iron 2021





# Volvo to build steel cars without fossil fuels by 2026

Swedish carmaker joins forces with steel firm to use technology that replaces coal with



**Mercedes-Benz takes equity stake in H2 Green Steel**

May 25, 2021  
an equity stake

## Fossil-free steel a giant step in Scania's decarbonisation

1 MARCH 2021

“Now we are gearing up in our journey towards completely emission-free products!” This is how Scania's Head of Purchasing Anders Williamsson sees the company's decision to invest in and enter into a partnership with the company H2 Green Steel



# Zero emissions in industry

---

- Paris agreement means zero and negative emissions
- Renewable electricity inexpensive and is now a key option
- Systemic changes with new sectoral couplings and new value chains
- New geographical location of primary production
- Possibly more expensive basic materials can be handled
- Infrastructures needed for electricity, hydrogen and carbon dioxide



Miniatur Wunderland, Hamburg, June 2019



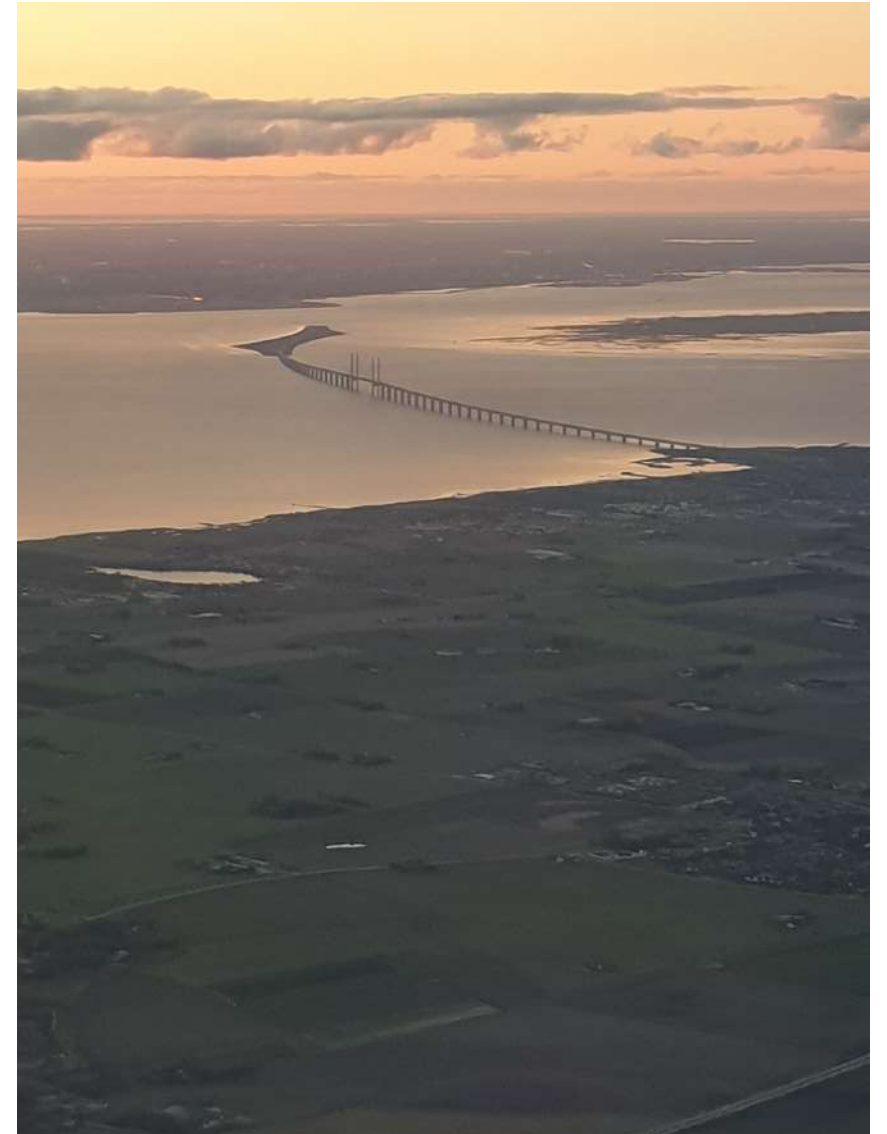
# A framework for thinking about industrial transitions

- **Directionality**
  - Visions, roadmaps, and strategies.
- **Knowledge creation and innovation**
  - RD&D. Experimentation. Co-evolution with other systems.
- **Creating and reshaping markets**
  - Risk sharing, de-risking, new infrastructures, and green market demand pull.
- **Capacity for governance and change**
  - Government expertise and ability to manage and evaluate policies for transition. Permit procedures and infrastructure.
- **International coherence**
  - Carbon leakage, UNFCCC (NDCs), sectoral leadership approaches.
- **Phase-outs and socio-economic implications**
  - Labour market and welfare policies for re-training and re-investment



# Recent developments

- US Inflation Reduction Act 2022, more than 370 billion USD over 10 years for energy security and climate change.
- EU response is A Green Deal Industrial Plan for the Net-Zero Age (2023) and the Net Zero Industry Act (16 March 2023)
- Fit for 55 (2021), REPowerEU (2022)
- EU Carbon Border Adjustment Mechanism (CBAM), transition starting Oct 2023
- Climate clubs?



# Thank you for listening

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LUNDS  
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# The emerging European legal framework for products, supply chains, and green industrial policy

Carl Dalhammar, IIIIEE, Lund University

# REMOVABLE, REPLACEABLE AND REPAIRABLE BATTERIES

HOW TO IMPROVE THE CIRCULARITY OF RECHARGEABLE BATTERIES IN CONSUMER ELECTRONICS AND LIGHT ELECTRIC VEHICLES



8<sup>th</sup> DECEMBER 2021



ER 2021 25

## Increasing the lifespan of products

Policies and consumer perspectives

## The circular economy: towards a new business paradigm with support from public policy



### Abstract

Today, we live in a linear economy and the current situation is a product of past ideas on effective markets, legal concepts and legal culture, business models and ideas on ownership and consumer culture. For us to move to a more circular economy, we need to start questioning how we look at products, markets, ownership and resources.

As a foundation for this process, this report highlights what the circular economy is about and some key issues we need to address to move towards a circular economy. It also highlights the need to connect the business and policy developments related to the circular economy to other sustainability fields, such as climate change and chemicals, and to place it within the broader context of sustainable consumption. A circular economy is not only about taking care of our resources; we must also ensure that all humans have access to the resources they need to live a decent life. Thus, the social dimensions of the circular economy should not be neglected: it must be an economy that benefits all humans.

### Key messages

- Our language is a means for change –we must pay attention to terms we use and how they affect our thinking and actions.
- Circular economy is a vision of an economic system based in a systemic approach to maintain a circular flow of resources, by regenerating, retaining or adding to their value, while contributing to sustainable development.
- The circular economy principles are: systems thinking, value creation, value sharing, resource availability focus, resource traceability and ecosystem resilience.
- Nothing is 100% circular even in a circular economy
- A new mindset is needed for design of circular economy solutions, and there is a need for an extended life cycle perspective
- We must change current perceptions on consumption and ownership; develop a standardized nomenclature and common concepts in legal frameworks, and support circular business models through laws and public procurement

### BACKGROUND PAPER

May 2022

Mattias Lindahl<sup>1</sup>  
Carl Dalhammar<sup>2</sup>

<sup>1</sup>Leading economy

<sup>2</sup>Lead research

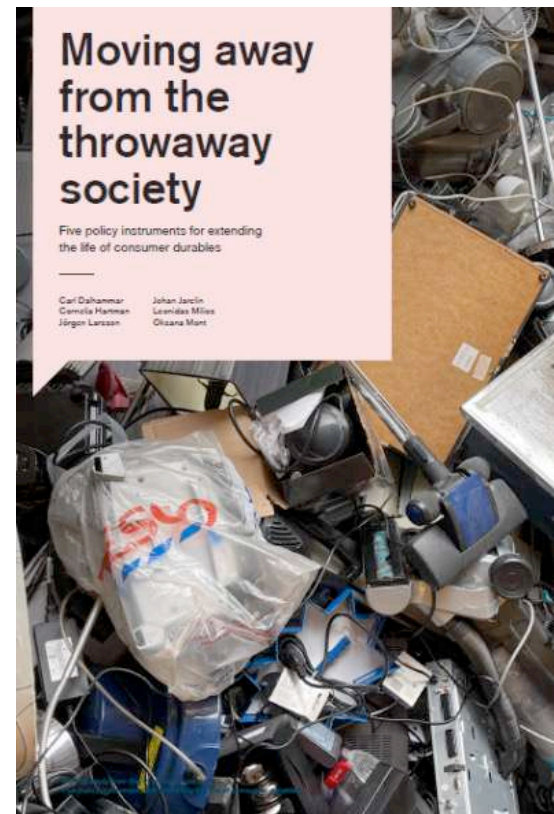
The Background Paper supports the  
Sustainable Growth Strategy 2021-23  
Creating a Better Future

# Moving away from the throwaway society

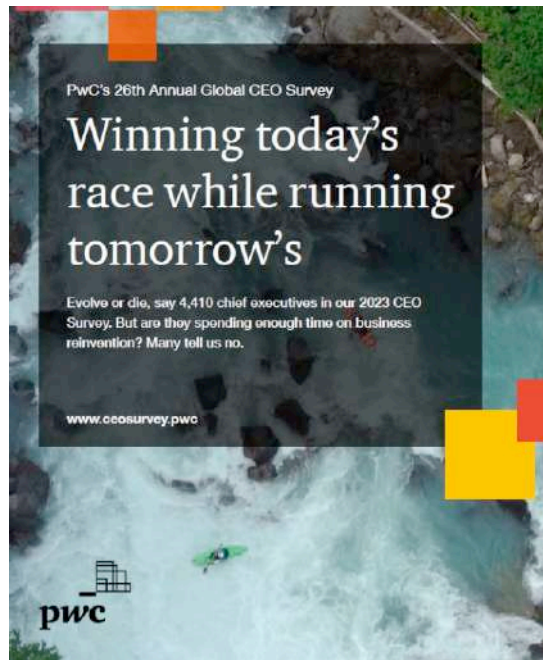
Five policy instruments for extending  
the life of consumer durables

Carl Dalhammar  
Carolla Hartman  
Jörgen Larsson

Johan Jacin  
Lennas Miles  
Olavara Mart



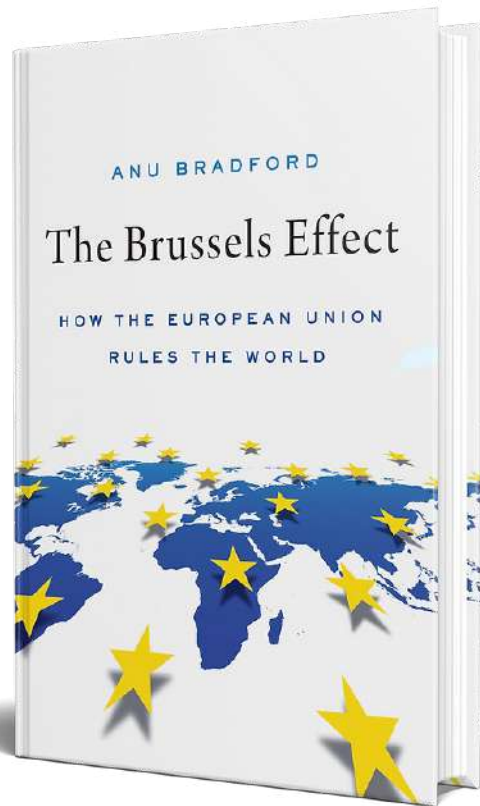
# “There is no business to be done on a dead planet.” David Bower



“Nearly 40% of CEOs think their company will no longer be economically viable a decade from now, if it continues on its current path...”

Underlying these figures, we believe, is consciousness among today’s leaders that we are living through extraordinary times, with five broad megatrend -climate change, technological disruption, demographic shifts, a fracturing world and social instability - reshaping the business environment.”

# The emerging EU regulatory landscape



1. Sustainable products, materials, packaging: new rules and standards
2. Sustainable supply chains: from voluntary to mandatory requirements
3. Sustainable finance (e.g. the Taxonomy)
4. Carbon markets, scope I-III, the Carbon Border Adjustment Mechanism
5. Green industrial policy: national → European
6. Secure access to resources
7. From 'just-in-time' to 'just-in-case', 'friend-shoring' etc.?

“Thus, I argue that a life-cycle world-view is becoming part of current, late-industrial culture in the Western world...”

“Every product casts a shadow...”

Eva Heiskanen, 2002, 1999



# Digital product passports

Supporting standards for products, materials, reporting and monitoring etc.  
 Legal framework for sustainable finance, e.g. reporting and taxonomy

## Upstream – supply chains

## Design, production, information

## Point of sale

## Product destruction

## Use phase

## End-of-use

### *Examples of EU policies*

- Proposal for a Regulation on deforestation-free products
- Conflict Minerals Regulation
- Proposal: Carbon border adjustment mechanism
- Timber Regulation
- Proposal: Directive on Corporate Sustainability Due Diligence
- Proposal: Regulation on prohibiting products made with forced labour on the EU market
- Critical Raw Materials

- Proposal Ecodesign Regulation
- Ecodesign Directive
- REACH, RoHS, ELV Directive etc.

- Rules on consumer rights, guarantees, marketing
- Proposals for consumer information: Empowering consumer green transition
- Proposed labeling in proposal for Ecodesign Regulation
- Proposed Directive on Green Claims

- Rules on reporting/bans on unsold goods in proposal for Ecodesign Regulation

- Legal proposal on right-to-repair
- Proposed Battery Regulation: easier to replace batteries in products
- Rules on right-to-repair in Ecodesign Directive

- Rules on producer responsibility and packaging
- Standards on e.g. remanufacturing
- New legal definition on e.g. refurbishment & remanufacturing, proposed Ecodesign Regulation

### *Examples of national, regional and local policies*

- Supply Chain Due Diligence Act (Ger)
- Fashion Sustainability and Social Accountability Act (NY State)
- Corporate responsibility for human rights (Can)
- Transparency Act (Nor)

- Mandatory labeling information (Fra)
- Repair fund (Fra)
- Criminalisation of planned obsolescence (Fra)

- Repair index (Fra)
- Proposed durability index (Fra)
- Longer guarantees in consumer law (several EU MS)

- Partial ban, destruction on unsold goods (Fra)
- Duty of Care (Ger)
- No VAT on donated goods (Bel)

- Repair fund (Fra)
- Tax reductions on repairs (Swe)
- Repair vouchers & repair networks (Vienna, Graz)

- Re-use options at recycling stations
- Public procurement of remanufactured goods
- Local re-use centers and support to second-hand sector

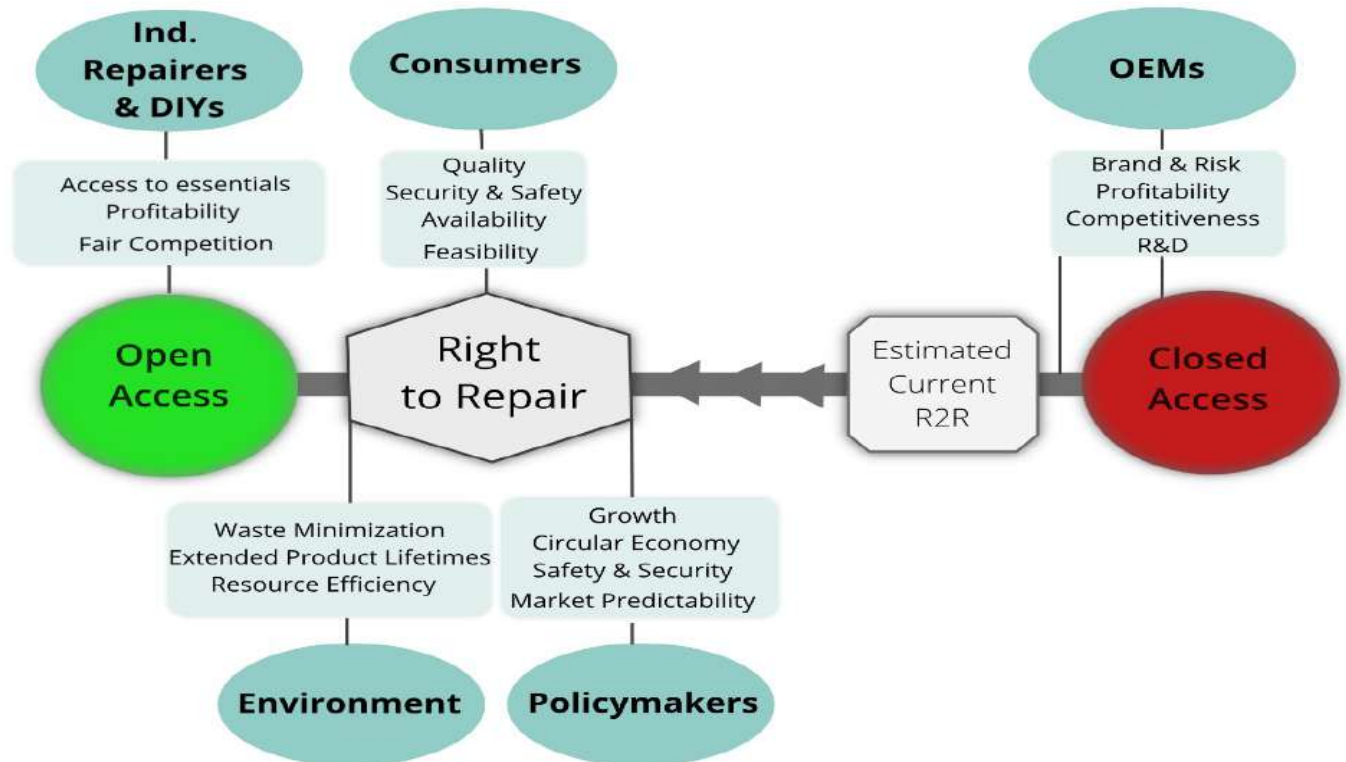
# Product destruction: we produce a lot of stuff that is never used

- E-returns, overstocking, out-of-fashion etc.
- Damaged goods during transport
- Food, textiles, electronics, cosmetics and hygiene products, wholesalers etc.
- National policies: partial ban, reporting obligations, reduced VAT on donations
- Proposal for EU Ecodesign Regulation: reporting obligations, possible for COM to ban

**Modelling suggests that the sum of unsold textiles and electronics destroyed in the European Union is expected to reach €21.74 billion by 2022**  
(Rödig et al. 2021)

# Promoting 'right-to-repair' (R2R)

- Ecodesign Directive: manufacturers must provide spare parts, repair manuals, software to independent repairers and consumers
- Consumer law: EU R2R proposal
- French repair index
- IPRs



# Its harder and harder for products to qualify for the Internal Market

- Rules on chemical content, energy efficiency, producer responsibility
- Manufacturers must supply spare parts, software updates, for a number of yearsetc.
- Proposal for a new Ecodesign Regulation
  - All kinds of products under its scope
  - Digital product passports
  - Product destruction
  - Lifetime, repairability, recycled content, recyclability etc.
  - New labeling requirements, more consumer information

# Industrial policy

- From national to European agenda
- North-South divide?
- Risk mitigation?
  
- Link to trade policy & law, weakening of WTO regime?
- Competition law, state aid and IPCEIs, permitting and administrative capacity, regulatory sandboxes, tax breaks on investments etc.

## Examples of Swedish projects:

Northvolt – battery cells

Hybrit – fossil free steel

Ash2Salt – salts produced from incineration ash



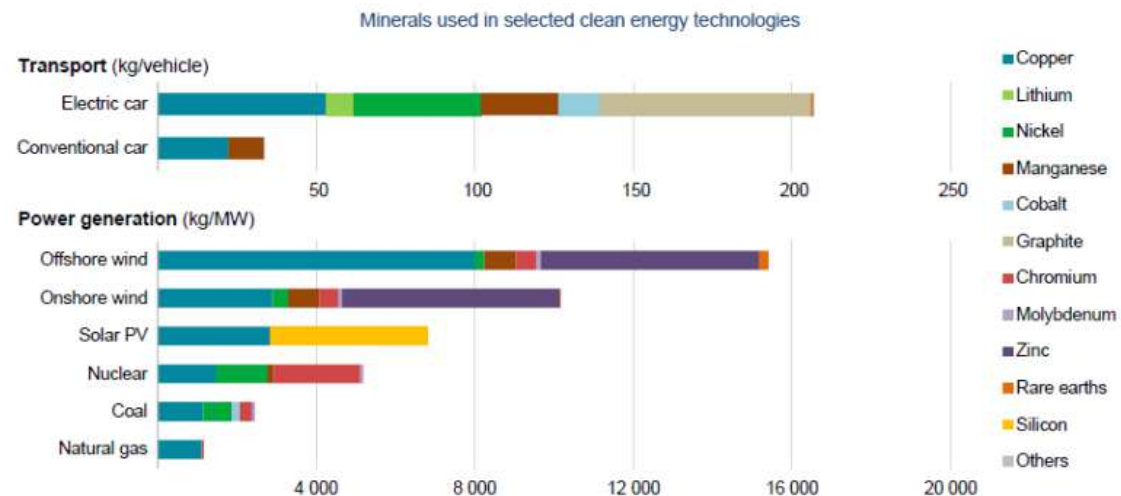
# The climate and resource challenges are connected

## The Role of Critical Minerals in Clean Energy Transitions



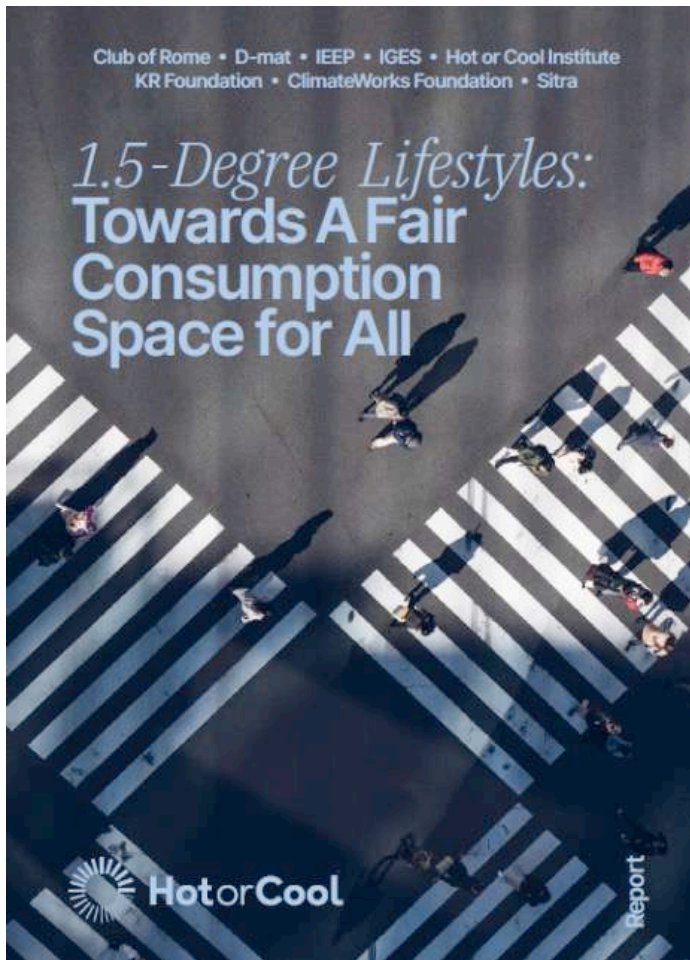
World Energy Outlook Special Report

The rapid deployment of clean energy technologies as part of energy transitions implies a significant increase in demand for minerals



Notes: kg = kilogramme; MW = megawatt. Steel and aluminium not included. See Chapter 1 and Annex for details on the assumptions and methodologies.

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# Three different strategies to achieve more sustainable consumption patterns

**Consuming more efficiently - better/greener consumption** - means consuming better alternatives of the same goods and services, for example eco-labelled, organic, energy-efficient, ethical, or locally produced goods.

“The central challenge... is to decouple growth absolutely from material and energy intensity” (UNEP, 2011).

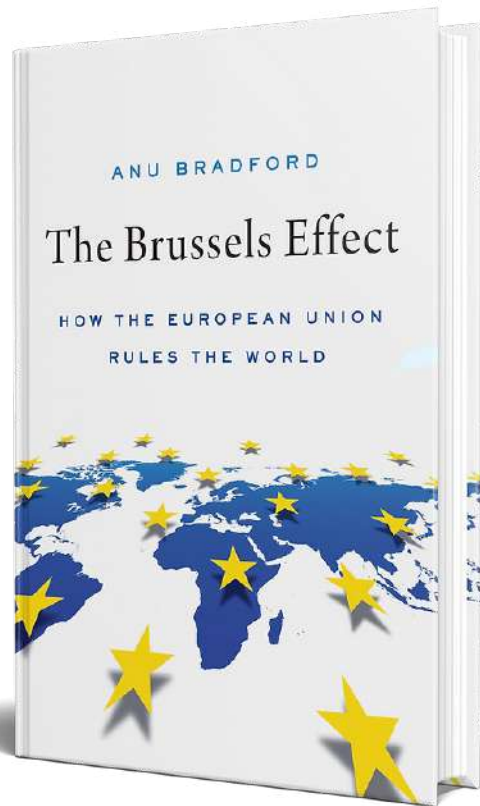
**Consuming differently - consumption shift** - means a relative reduction in the impact of consumption due to switching to a less impactful category of goods and services, for example sharing instead of buying, using public transport instead of driving or eating vegetables instead of meat.

“Niche” activities, slow progress, limited environmental potential

**Consuming less - sufficient consumption** - means an absolute reduction in consumption levels of goods and services leading to an absolute reduction in environmental and social impacts, for example living in a smaller area, flying less often, reducing consumption of meat and purchase of clothes and driving less.

If the “pie” isn’t growing, there is a need to consider fairness & justice

# The emerging EU regulatory landscape



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- 7. From 'just-in-time' to 'just-in-case', 'friend-shoring' etc.?**



# Tack så mycket!

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How can we live a good life on one planet with over seven billion people?
- Greening the Economy: Sustainable Cities  
How can we shape our urban development towards sustainable and prosperous futures?
- Circular Economy: Sustainable Materials Management  
How can we create a circular economy through sustainable materials management?
- Urban Nature: Connecting Cities, Nature and Innovations  
How can we work with nature to design and build our cities?
- Sharing Cities: Governance and Urban Sustainability  
How can we govern the sharing economy in our cities?



# Third party interventions by National Human Rights Institutions in Climate Cases

Jenny Sandvig and Hannah Cecilie Brænden,  
Norway's NHRI

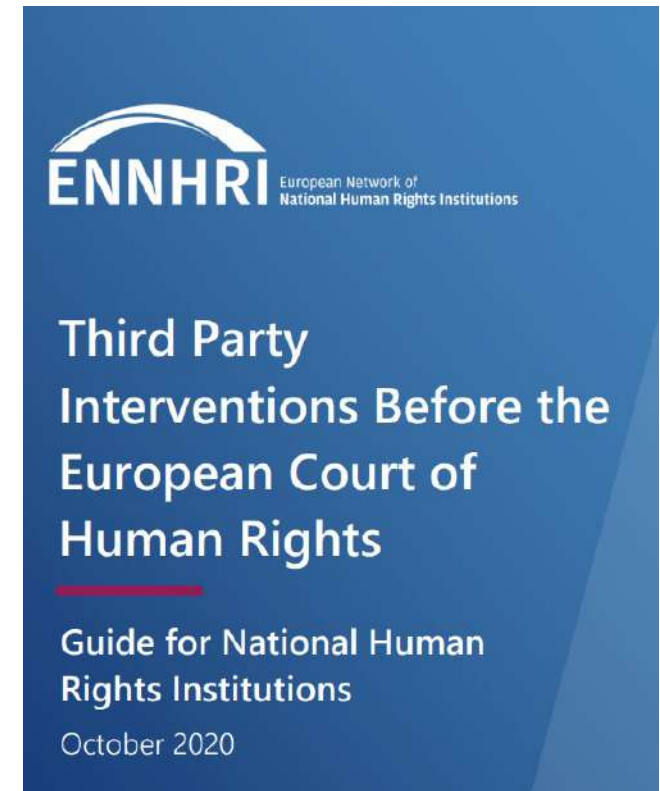


Norges institusjon for  
menneskerettigheter



# Court submissions by NHRIs

- NHRIs are mandated by law to promote and protect human rights
- European Network of NHRIs (ENNHRI) represent more than 40 NHRIs
- Third party in ECHR cases, e.g. Big Brother Watch v. UK (58170/13), DD v. Lithuania (13469/06), Strøbye v. Denmark (25802/18)



# Climate change affects human rights

- UN General Assembly: climate change «constitute some of the most pressing and serious threats to» all human rights (A/RES/76/300)
- The Human Rights Council: encourages NHRIs to identify how climate change negatively affect human rights (A/HRC/51/L.16/Rev.1)



Foto: UN photo / Mark Garten

# Third party in pending ECHR climate cases

## Grand Chamber:

- Verein KlimaSeniorinnen et al. v. Switzerland
- Carême v. France
- Duarte Agostinho et al. v. Portugal et al.

## Chamber:

- Greenpeace Nordic et al. v. Norway
  - HR-2020-2472-P, Norwegian Supreme Court, *amicus curiae*



Foto: ECHR.

# Questions?







AURORA

# The marriage of climate law and human rights law in strategic litigation

EUFJE Conference  
Lund 10 May 2023

Anna Rogalska Hedlund, Ida Edling and Greta Frisk Norin

# The urgency of the situation

## Why?

“Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all.”

IPCC, AR6, WG2, para D.5.3

## How?

Declaratory judgment (fastställelsetalan)

Forward looking from today to 2030

Class action (grupptalan)



# Responsibilities are too vague

## Why?

Fair effort sharing is a necessity - but not a reality



## How?

The omission consists of the State not taking sufficient and adequate:

- procedural measures
- material measures

# The insufficiency of current measures

## Why?

Swedish emissions targets grossly insufficient - and not likely to be met!

- Exclude large parts of emissions
- Exclude conservation and restoration of greenhouse gas sinks and reservoirs
- Ambition not in line with science and equity
- Targets not expected to be met

## How?

ECHR - effective and practical not theoretical and illusory

Articles 2, 3, 8, 14 and Article 1 of first Protocol

Interpreted in light of national and international law as well as emerging European standard



AP U.S. News World News Politics Sports Entertainment Business Technology Health Science Oddities

# Swedish activists sue state over its climate policies

November 25, 2022



STOCKHOLM (AP) — Hundreds of activists, among them Greta Thunberg, filed a lawsuit against the Swedish state on Friday to force the government to take more aggressive action.



## Svenska staten stäms för bristande klimatpolitik

UPPDATERAD 25 NOVEMBER 2022. PUBLICERAD 25 NOVEMBER 2022

I dag lämnar klimatorganisationen Aurora den svenska staten för bristande klimatpolitik. Bakom stämningen står över 600 barn och ungdomar.

– Staten behandlar inte klimatkrisen som en existentiell hot. Istället kränker mänskliga rättigheter i Sverige, säger Aurora talesperson Anton Foley.

Bakgrunden till stämningen är att den svenska klimatpolitiken är olaglig. Aurora menar att staten inte gör tillräckligt för att minska utsläppen av växthusgaserna. Istället handlar bland annat om att staten inte gör tillräckligt för att minska utsläppen måste minska, eller tagit fram genomföra klimatpolitiken. Istället skriver organisationen att staten i själva genomförandet, skriver organisationen.



## Aurora: Nu stämmer vi staten för klimatet

45 min • 015 08 juni 2022 kl 13.03

Svenska ungdomar i föreningen Aurora ska stämna staten för att de tycker att den gör för lite för att nå klimatmålen och för att klimatmålen dessutom är orealistiska. Med en gruppintervju berättar de in alla i Sverige under 26 år om varför de stämmer staten.



How to Tell our story, raise awareness, continue building the climate movement