

NEWSLETTER

September 2024

The main new developments of 2024 regarding environmental issues

Legance

1. Directive (EU) 2024/1203 which overhauls the system

for the protection of the environment through criminal law

The main topics

Directive 2024/1203:

- draws up **minimum standards** concerning the **definition of offences and sanctions**, in order to prevent and combat the growing trend of environmental crime;
- **criminalises**, *inter alia*, (i) the **unlawful manufacture, marketing or use of substances**, where such conduct causes or is likely to cause "**death or serious injury to any person or substantial damage to the quality of air, soil or water, to an ecosystem, to fauna or flora**", and where such substances are subject to restrictions under the legislation regarding chemicals, (ii) the unlawful release, supply or export of raw materials or products associated with **deforestation** and forest degradation, (iii) the production, placing on the market, use or release of **fluorinated greenhouse gases** or "**products and equipment, and parts thereof, which [contain them] [...] or whose operation relies on such gases, or the operation of such products and equipment,**" and (iv) the illegal recycling of ships. Such conduct constitutes a "**qualified offence**" if it causes "**the destruction of an ecosystem of substantial size or environmental value or a habitat within a protected area**" or "**widespread and significant, irreversible or lasting damage to that ecosystem or habitat, or [...] to the quality of air, soil or water**", and is unlawful and carried out "**with or without serious negligence**";
- envisages the **tightening of sanctions** including, for natural persons, imprisonment of up to 10 years and, for legal persons, fines amounting to at least 5 per cent of the total global revenue for the most serious offences or, alternatively, a fine of Euro 40 million.

Publication: European Union Official Gazette of **30 April 2024**

Timeframe: in force as of **20 May 2024**; to be transposed by **21 May 2026**

2. Regulation (EU) 2024/1157 concerning the shipment of waste

The main topics

Regulation 2024/1157:

- aims at: (i) strengthening enforcement to **prevent illegal shipments of waste** within the EU and to third countries; (ii) **increasing the traceability of waste shipments within the EU**; and (iii) **facilitating recycling and reuse**;
- **applies** to shipments of waste between Member States, with or without transit through third countries; shipments of waste imported into the EU from third countries; shipments of waste exported from the EU to third countries; and shipments of waste in transit through the EU *en route* to or from third countries;
- establishes **procedures and control schemes** for shipments of waste according to the origin, destination and route of shipment, as well as the type of waste and the type of treatment to be applied to the waste at its destination;
- prohibits **intra-EU shipments of all waste for disposal** unless agreed and authorised through a prior written notification and consent procedure;

- establishes **specific provisions** for shipments of particular types of waste including, for example, a ban on exports to non-OECD countries of non-hazardous plastic waste and certain quantities of waste or mixtures of waste containing or contaminated with POPs (i.e. Persistent Organic Pollutants);
- envisages the **digitisation** of the exchange of information and documentation via a central system managed by the EU Commission;
- strengthens the EU Commission's **powers to inspect and monitor** and introduces an obligation for exporters to ensure that **recipient plants** have been **audited**, in line with the environmental and public health protection objectives and more environmentally friendly management of EU waste.

Publication: European Union Official Gazette of **30 April 2024**

Timeframe: in force as of **20 May 2024**; applicable as of **21 May 2026** subject to certain specific provisions with varying levels of implementation

3. Directive (EU) 2024/1785 which amends the directive concerning industrial emissions

The main topics

Directive 2024/1785:

- **extends the scope** of Directive (EU) 2010/75 to, for example, the **manufacture of batteries** with a production capacity of 15,000 tonnes or more of battery cells per year and **industrial-scale mining of the minerals specified in the Directive**;
- reduces bureaucracy by providing for the development of **systems for electronic authorisation of installations and the implementation of electronic authorisation procedures by 31 December 2035**;
- also establishes an increase in the importance of Best Available Techniques (“**BAT**”), i.e. best available techniques aimed at achieving a high level of protection not only of the environment, but also of **human health** and **climate protection**. Findings on BAT will include so-called **emerging techniques**, i.e. innovative techniques for industrial activities, as well as the **environmental performance levels** associated with these techniques;
- requires that the operator of the plant must prepare and implement an **environmental management system** that includes, among other things, **measures** aimed at the prevention of waste generation and the prevention and/or reduction of the use and emission of hazardous substances, as well as a **transformation plan** containing information on how the operator will transform the plant in the period 2030 -2050, in order to contribute to the **development of a sustainable, clean, circular and climate-neutral economy** within that time. The environmental management system shall be **periodically reviewed** to ensure its continuing suitability, adequacy and effectiveness;
- also intervenes significantly with regard to **finances**, requiring Member States to establish **effective, proportionate and dissuasive** penalties for violations of the national provisions implementing them, including **finances** and **criminal penalties**. In particular, for **the most serious violations committed by a legal person**, the maximum amount of fines shall be at least **3% of the annual turnover** of the operator in the EU in the business year preceding that in which the fine is incurred;
- introduces, in the event of **harm** caused to **human health** as a result of a violation of the national provisions adopted pursuant to Directive 2024/1785, the possibility for those affected to claim **compensation** from the natural or legal person who has committed such violation.

Publication: European Union Official Gazette of **15 July 2024**

Timeframe: in force as of **4 August 2024**; to be transposed by **1 July 2026**

3.1 REGULATION (EU) 2024/1244 CONCERNING THE REPORTING OF ENVIRONMENTAL DATA AND THE CREATION OF AN EMISSIONS PORTAL

The main topics

Regulation 2024/1244:

- is aimed at:
 - **improving public access to information** to enable public involvement in environmental decision-making processes;
 - **enabling the monitoring of industrial pollution** in order to work towards its prevention and reduction;
- establishing **rules for the collection and reporting of environmental data** relating to industrial installations where one or more activities listed in Annex I of Regulation (EU) 2024/1244 are carried out;
- establishing **a portal concerning industrial emissions** in the form of an online database.

Publication: European Union Official Gazette of **2 May 2024**

Timeframe: in force as of **22 May 2024**; applicable as of **1 January 2028**

4. Regulation (EU) 2024/573 concerning fluorinated greenhouse gases

The main topics

Regulation 2024/573:

- applies to the **fluorinated greenhouse gases** listed in **Annex I** (HFCs, PFCs and other perfluorinated compounds and fluorinated nitriles), in **Annex II** (unsaturated hydro(chloro)fluorocarbons and other fluorinated substances) and **Annex III** (ethers, ketones and other fluorinated compounds), whether on their own or as mixtures containing these substances; **to products and equipment, and parts** thereof, containing fluorinated greenhouse gases or whose operation depends on such gases;
- sets out provisions for the **containment of fluorinated greenhouse gases** and specific products and equipment containing, or whose operation depends upon, fluorinated greenhouse gases. This containment includes measures on emission prevention, measures on leakage checks and leakage detection systems, record keeping, recovery and destruction, extended producer responsibility and measures concerning certification and training;
- includes provisions to **restrict the placing and sale** of certain products and equipment **on the market**, as well as regulations regarding their **labelling**. In connection with the latter, the **implementing Regulation (EU) 2024/2174**, which governs the format of labels for certain products and equipment, has recently been approved and will be applicable from 1 January 2025. For the same restriction purposes, Regulation 2024/573 also contains provisions to control the use of certain substances;

- establishes a “**Production Timetable**” for **hydrofluorocarbons** and allows them to be placed on the market only if manufacturers and importers have been allocated a quota by the EU Commission. The EU Commission is in charge of managing the so-called “**F-Gas Portal**”, i.e. an electronic system to manage the quota system, import and export licensing requirements and reporting obligations on fluorinated greenhouse gases;
- contains new provisions on: (i) trade **in imports and exports** of F-gases and products/equipment containing them or whose operation depends on them; and (ii) trade controls, through the introduction of **monitoring requirements**;
- also provides for regulations on the **reporting and collection of emission data**.

Publication: European Union Official Gazette of **20 February 2024**

Timeframe: in force as of **11 March 2024**; with the application of certain provisions as of **2025**

5. Directive (EU) 2024/1275

concerning the energy performance of buildings

The main topics

Directive 2024/1275:

- envisages the adoption by Member States of “**National Renovation Plans**” to increase the energy efficiency of buildings by imposing minimum energy performance requirements;
- envisages **renovation of non-residential buildings**, giving priority to those with the worst energy efficiency performance;
- requires, with regard to residential buildings, that over time, Member States **reduce average primary energy consumption**, giving priority to buildings with the worst energy efficiency performance;
- **promotes the installation of solar systems on public and non-residential buildings** with specific deadlines and requires the inclusion of electric vehicle **charging points** and bicycle parking spaces in the designs of new residential and non-residential buildings;
- introduces a **standard approach for determining the energy performance and greenhouse gas emission levels** of buildings throughout their life cycle, and establishes a **standard template energy certificate** to ensure that certificates are used in a uniform manner;
- makes it compulsory to **ensure that energy certificates are issued in the case of specific trigger events**, such as significant renovations and the sale of buildings, and confirms the current disclosure requirements for energy performance certificates when selling or renting a building;
- introduces **a ban on the installation of fossil-fuelled boilers by 2040**, with financial incentives for stand-alone boilers ceasing as early as 2025;
- states that, from 2030, all new **private buildings** will have to be zero-emission, while **public** buildings will have to comply as early as 2028;
- leaves it up to the Member States to determine the **penalties applicable in the event of violation of national legislation** transposing Directive 2024/1275.

Publication: European Union Official Gazette of **8 May 2024**

Timeframe: in force as of **28 May 2024**, to be transposed by **29 May 2026**

6. Regulation (EU) 2024/1991

concerning the re-introduction of nature

The main topics

Regulation 2024/1991:

- establishes a framework within which Member States are to implement effective measures to achieve, by 2050, the **restoration of all ecosystems** that so require and contribute to the **fulfilment of climate change** reduction targets;
- contains a number of **obligations for Member States**, including the restoration of (i) marine ecosystems (ii) terrestrial, coastal and freshwater ecosystems, (iii) forest, agricultural and urban ecosystems;
- considers energy production plants from renewable sources as installations of **predominant public interest** when assessing and weighing up interests for their construction;
- requires Member States to prepare a **national restoration plan** and to carry out **checks and monitoring** in order to identify the necessary restoration measures. This plan covers the period up to 2050, with intermediary deadlines corresponding to the aims and obligations of the regulation;
- requires Member States to draw up a **draft national recovery plan**; to be submitted to the EU Commission by September 2026;
- establishes **reporting and monitoring obligations** with respect to the activities set out in the plan.

Publication: European Union Official Gazette of **29 July 2024**

Timeframe: in force as of **18 August 2024**

7. New developments regarding the

Emission Trading System (ETS)

Phase IV ETS

The ETS, originally introduced by Directive (EC) 2003/87 - which set up a system for greenhouse gas emission allowance trading - was divided into four trading periods, known as "phases".

As a result of the revision of the ETS for phase IV (2021-2030), Directive (EU) 2023/959 was adopted, which entered into force on 5 June 2023 and whose provisions will apply from 1 January 2024.

The main topics

Directive 2023/959, as part of Phase IV ETS:

- extended the scope of the ETS to include:

- the **maritime transport** sector, **from 2024**;
- introducing monitoring and reporting obligations **for urban waste incineration** plants with a total rated thermal input exceeding 20 MW, starting from 2024;
- provides for a **phase-out of free emission allowances** for the aviation sector;
- creates a separate ETS system for the **building** and **road transport** sectors and **additional sectors** not covered by Annex I of Directive 2003/87/EC, starting from 2027 (so-called **ETS II**);
- introduces the obligation for economic operators to which the so-called ETS II applies (i.e. the activities listed in Annex III of Directive 2023/959) to obtain a **permit, issued by the competent national authority, to emit greenhouse gases**;
- provides for a **system of monitoring, reporting and verification of "Scope 3" emissions**, i.e. indirect greenhouse gas emissions generated in the company's business value chain (including upstream and downstream emissions);
- provides, as of 1 January 2028, for the **surrender** by regulated entities of an amount of emission allowances equal to the total emissions of each regulated entity, corresponding to the amount of combustibles released for consumption during the previous year, for the activities listed in Annex III of Directive 2023/959.

Updates on the implementation of Directive 2023/959:

On 10 June, the Council of Ministers approved a preliminary Draft Legislative Decree to incorporate Directive 2023/959 into national law.

Environmental Law Department

Legance's Environmental Law Department is available for any clarification and in-depth analysis, also with regard to specific cases.

For further information:



Antonella Capria
Partner

+39 02.89.63.071

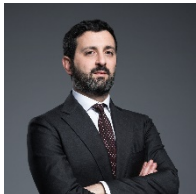
acapria@legance.it



Francesca Carlesi
Senior Counsel

+39 02.89.63.071

fcarlesi@legance.it



Edward Ruggeri
Senior Counsel

+39 02.89.63.071

eruggeri@legance.it

Or your point of contact within Legance.

Contacts

Milan Via Broletto, 20 – 20121 – T +39 02 89 63 071

Rome Via di San Nicola da Tolentino, 67 – 00187 – T +39 06 93 18 271

London Aldermary House, 10 – 15 Queen Street – EC4N 1TX – T +44 (0)20 70742211

info@legance.it – www.legance.it

The Firm

Legance is an independent Italian law firm with expert, active and result-oriented lawyers, with a strong team spirit that has permitted a flexible and incisive organisational model that, through departments active in all practice areas of business law, offers the right balance between the specialist and the lawyer as a global consultant. Legance comprises more than 400 lawyers, working in its Milan, Rome and London offices, and has a diverse and extensive practice covering the following areas: Administrative; Banking & Finance; Compliance; Corporate Finance; Data Protection and Data Law; Debt Capital Markets; Dispute Resolution; Employment and Industrial Relations; Energy & Infrastructure; Environmental; Equity Capital Markets; ESG and Impact; EU, Antitrust and Regulation; Financial Intermediaries Regulations; Food; Insurance; Intellectual Property; Investment Funds; Life Sciences & Healthcare; Non Performing Loans; Real Estate; Restructuring and Insolvency; Shipping, Aviation and Transportation; Tax; Telecommunications, Media and Technology; White Collar Crimes. For more information, please visit our website: www.legance.com.

Disclaimer

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice.

*This Newsletter is sent to persons who have provided their personal data in the course of professional relations, meetings, seminars, workshops or similar events. You may also receive this newsletter because Legance was authorized. You may finally receive it, because you have engaged Legance. If you wish not to receive the newsletter anymore, please write an email to newsletter@legance.it and you will be removed from the list of recipients. Until you cancel yourself from the list of recipients your personal data will be processed on paper or electronically for purposes which are related to the existing professional relations, or for information and divulgation reasons, but are not communicated to third parties, unless such communication is imposed by law or strictly necessary to carry out the relation. Data controller is **Legance – Avvocati Associati**. The list of the data processors is available if you write an email to clienti.privacy@legance.it. In any event, you are entitled to your rights as set forth in the current data protection legislation. All the above requests must be forwarded by mail privacy@legance.it.*

Legance - Avvocati Associati and its partners are not regulated by the Solicitors Regulation Authority ("SRA") and the SRA's compulsory insurance scheme does not apply to them (they are instead covered by equivalent Italian insurance). A list of the partners of Legance - Avvocati Associati is open to inspection at the office of its London branch at Aldermary House 10-15 Queen Street - EC4N1TX, and also on the following website <https://www.legance.com/professionals/>.