

ARTHUR COX

Legal Implications of Climate

The law as a lever for
climate action

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LEGAL IMPLICATIONS OF CLIMATE

Climate litigation

Climate litigation

International landscape

- Rapid growth in recent years (1000 cases since 2015)
- Seminal judgments – including Ireland, France and Germany

Ireland

- Climate Action Plan - new Environment & Planning division of the High Court – Q4, 2022



02

LEGAL IMPLICATIONS OF CLIMATE

Legal challenges to Government

Challenges to Government

- *Friends of the Irish Environment v Government of Ireland*
National Mitigation Plan struck down by the Courts for non-compliance with the 2015 Climate Act.

- Germany – successful challenge to constitutionality of certain provisions of the German Climate Protection Law on constitutional and human rights grounds.
Government increased its net zero ambitions.

France – Adequacy of Government's carbon neutrality measures challenged. *Conseil d'Etat* held that Government must take all necessary measures to reduce emissions.



03

LEGAL IMPLICATIONS OF CLIMATE

Legal challenges to projects

Challenges to Projects

Ireland

- Edenderry co-fired peat and biomass power plant
- Kilkenny continental cheese manufacturing plant

International

- ClientEarth (shareholder) sought annulment of Enea (Poland) resolution approving a new coal-fired power plant, challenging the financial viability of the project in the context of the transition to a low-carbon economy.



04

LEGAL IMPLICATIONS OF CLIMATE

Challenges to Investment / Financing Decisions

Challenges to Investment / Financing Decisions

ClientEarth v. European Investment Bank

- EUR60M loan for 50MW biomass power plant.
- EU General Court held that EIB must undertake internal review of financing decision

Greenpeace v. State of the Netherlands

- 3.4BN COVID bailout package to KLM airline

Australasian Centre for Corporate Responsibility v Santos

- Testing of a company's net zero emissions target
- Test case on the viability of carbon capture

Challenges to Investment / Financing Decisions

ClientEarth v. Belgian National Bank – case pending

- Purchase of bonds from fossil fuel or GHG intensive companies
- Alleged failure to meet environmental, climate and human rights obligations (pursuant to the TFEU and EU Charter of Fundamental Rights)

UK Companies Acts

- Directors duty to promote the success of the company, having regard to “*the impact of the company’s operations on the community and the environment*” .
- Shareholders – financial risk to company from climate change, therefore climate change compliance required.

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Thank you!

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