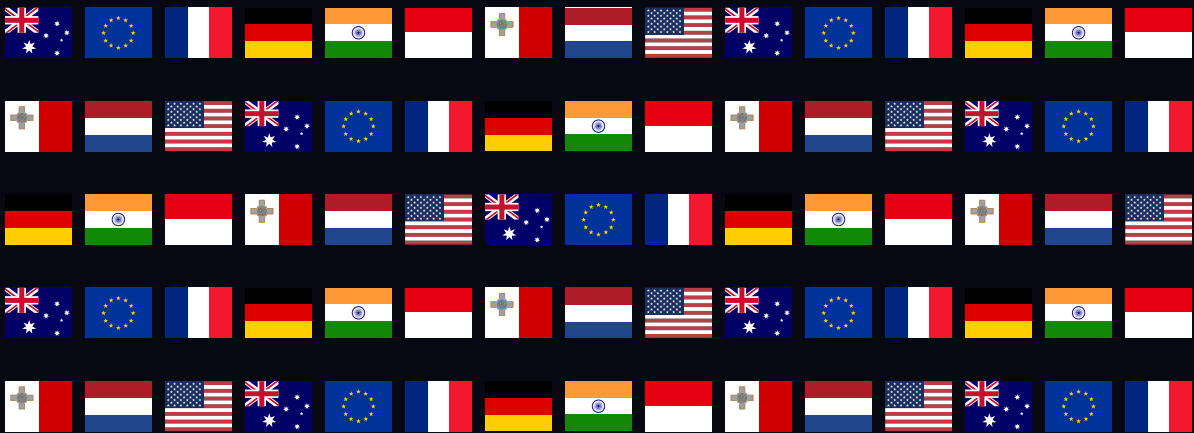


# CLIMATE REGULATION

## Netherlands



# Climate Regulation

Consulting editors

**James M. Auslander, Brook J. Detterman**

*Beveridge & Diamond PC*

---

Quick reference guide enabling side-by-side comparison of local insights, including the main climate regulations, policies and authorities; national emission levels, limits and emission reduction projects; emission allowances and trading; energy and non-energy sector regulation; renewable energy consumption, policy and general regulation, including carbon capture and storage; climate matters in M&A transactions; and recent trends.

---

Generated 18 October 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

# Table of contents

## **MAIN CLIMATE REGULATIONS, POLICIES AND AUTHORITIES**

International agreements

International regulations and national regulatory policies

Main national regulatory policies

Main national legislation

National regulatory authorities

## **GENERAL NATIONAL CLIMATE MATTERS**

National emissions and limits

National GHG emission projects

## **DOMESTIC CLIMATE SECTOR**

Domestic climate sector

## **GENERAL GHG EMISSIONS REGULATION**

Regulation of emissions

GHG emission permits or approvals

Oversight of GHG emissions

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

Regime

Registration

Obtaining, possessing and using GHG emission allowances

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

Emission allowances trading

Trading agreements

## **SECTORAL REGULATION**

Energy sector

Other sectors

## **RENEWABLE ENERGY AND CARBON CAPTURE**

Renewable energy consumption, policy and general regulation

Wind energy

**Solar energy**

**Hydropower, geothermal, wave and tidal energy**

**Waste-to-energy**

**Biofuels and biomass**

**Carbon capture and storage**

## **CLIMATE MATTERS IN TRANSACTIONS**

**Climate matters in M&A transactions**

## **UPDATE AND TRENDS**

**Emerging trends**

## Contributors

### Netherlands



**Willem Bosma**  
bosma@feltz.nl  
*Van der Feltz attorneys*



**Pauline van Aardenne**  
vanaardenne@feltz.nl  
*Van der Feltz attorneys*



**Ronald Olivier**  
olivier@feltz.nl  
*Van der Feltz attorneys*



**Delila Fejzović**  
fejzovic@feltz.nl  
*Van der Feltz attorneys*

VAN DER FELTZ  
advocaten

## MAIN CLIMATE REGULATIONS, POLICIES AND AUTHORITIES

### International agreements

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

The United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement are all applicable in the Netherlands. Most international agreements are directly binding in the Dutch legal system under the Dutch constitution. The Paris Agreement was signed by the European Union, which means that the Netherlands is also bound by the Agreement through EU membership.

The European Union has adopted regulations on climate matters (eg, Directive 2003/87/EC on the allowance of trading with greenhouse gas emissions). In December 2019, it presented the European Green Deal, the goal of which is to make the European Union the first climate-neutral continent by 2050. The goals presented by the European Union are goals for the European Union as a whole, so they must be applied by each member state. The member states must draw up plans for this, which are examined by the European Commission. To reach the goal of climate neutrality, on 14 July 2021 the European Commission adopted a set of proposals to make the European Union's climate, energy, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55 per cent by 2030, compared to 1990 levels. The package of proposals aims to make the EU Fit for 55 and build upon policies and legislation the European Union has already put in place.

*Law stated - 18 October 2022*

### International regulations and national regulatory policies

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

As most international agreements are directly binding in the Dutch legal system, there is generally no need to implement these agreements in national law. Because most international agreements do not contain specific measures that must be taken to achieve the climate goals, the Dutch legislator is still required to adopt new legislation to achieve those climate goals.

The European Union distinguishes two types of climate rules: regulations and directives. A regulation is directly binding in all EU member states, meaning, among other things, that there is no influence from national regulatory policy. Directives, on the other hand, must be transposed into national law.

*Law stated - 18 October 2022*

### Main national regulatory policies

Outline recent government policy on climate matters.

The Dutch government aims to reduce Dutch greenhouse gas emissions by 49 per cent by 2030 and by 95 per cent by 2050 (compared to 1990 levels). On 20 December 2019, in *Urgenda*, the Supreme Court of the Netherlands ruled that the Court of Appeal was authorised to decide that the Dutch state is obliged to reduce greenhouse gas emissions in the Netherlands by 25 per cent (compared to 1990 levels) by the end of 2020. The Dutch government has put together a package of measures to comply with the ruling in *Urgenda*.

The Climate Agreement is an agreement that was concluded between multiple organisations and companies in the Netherlands. In the Agreement, the government has, for example, introduced a CO<sub>2</sub> tax for large companies from 2021

and increases to natural gas tax over the following six years.

*Law stated - 18 October 2022*

### **Main national legislation**

Identify the main national laws and regulations on climate matters.

The Climate Act , in effect as of 2020, determines by what percentage the Netherlands must reduce CO<sub>2</sub> emissions and intends to provide citizens and companies with certainty regarding climate goals. The policy and measures to achieve these climate goals are laid down in the Climate Plan , the National Energy and Climate Plan and the Climate Agreement.

The Climate Plan is drawn up for a period of 10 years and is adjusted every five years based on current insights. The Climate Plan must, for example, entail measures taken to stimulate the extension of renewable energy and saving on primary energy consumption, as well as a review of the most recent scientific developments in the research of recent climate change and the development in the technological possibilities to reduce the emission of greenhouse gases.

The Climate Agreement is an agreement between the government, organisations and companies in the Netherlands to combat climate change. The energy, industrial and agricultural sectors are participants in this agreement.

An NECP must be drawn up by all EU member states to demonstrate how they meet and contribute to the European climate goals (to achieve a 32 per cent share of renewable energy by 2030).

*Law stated - 18 October 2022*

### **National regulatory authorities**

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

The Ministry of Economic Affairs and Climate is primarily responsible for rules and regulations relating to climate. The Ministry, as a governing body, has limited legal power to adopt national climate regulations itself. The Minister of Economic Affairs and Climate can only present a bill on behalf of the government, which must then be approved by a majority of Parliament, provided that the bill can be amended by members of the Parliament.

The Minister is competent to adopt certain rules and regulations provided that this power has been rewarded by statute. Furthermore, local governments must take into account climate rules and regulations when acting within their competencies.

*Law stated - 18 October 2022*

## **GENERAL NATIONAL CLIMATE MATTERS**

### **National emissions and limits**

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

Data on GHG emissions in Netherlands can be found in the Pollutant Release and Transfer Register . The table below shows GHG emissions in metric tons of CO<sub>2</sub> equivalent for the years 1990, 2018 and 2019.\*

|                              | 1990  | 2018  | 2019  |
|------------------------------|-------|-------|-------|
| Carbon dioxide               | 162.7 | 159.5 | 153.6 |
| Methane                      | 31.8  | 17.3  | 17.2  |
| Nitrous oxide                | 17.5  | 8.0   | 7.9   |
| Fluorinated greenhouse gases | 8.5   | 2.0   | 2.0   |
| Total                        | 220.5 | 186.8 | 180.7 |

Article 2 of the Climate Act determines the extent to which the Netherlands must reduce CO<sub>2</sub> emissions: 95 per cent reduction by 2050 and 49 per cent reduction by 2030 (compared to 1990 levels). These reduction obligations, and many other obligations under international and EU law, are binding on the Dutch state but do not directly apply to private parties in the Netherlands. However, private parties must comply with Dutch rules and regulations to achieve these reduction goals. (Last updated January 2021.)

*Law stated - 18 October 2022*

### National GHG emission projects

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

As agreed in the Climate Agreement, a CO<sub>2</sub> tax for large companies was introduced in 2021, together with increases to natural gas tax over the following six years. The Bill for the CO<sub>2</sub> Tax Industry Act amends the Environmental Taxes Act and the Environmental Management Act. The CO<sub>2</sub> tax is a surcharge that companies who own either an industrial installation that falls under the EU Emissions Trading System, a waste incineration plant or an installation that emits large quantities of nitrous oxide must pay when such an installation emits more than the exempt amount of greenhouse gas. Installations that emit heat or electricity are exempt from the CO<sub>2</sub> tax. The CO<sub>2</sub> tax will mainly concern GHG emissions from and for industrial production and waste incineration. The Bill is designed with an aim of achieving the reduction target for industry as agreed in the Climate Agreement, while affecting neighbouring countries as little as possible. The national tax is connected in various places with the EU Emissions Trading System based on Directive 2003/87/EC.

Furthermore, two major offshore carbon capture and storage projects are planned: Athos and Porthos. The goal of these projects is to transport large amounts of CO<sub>2</sub> and bury them in the empty gas fields under the North Sea.

*Law stated - 18 October 2022*

### DOMESTIC CLIMATE SECTOR

#### Domestic climate sector

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

On 28 June 2019, the government presented the Climate Agreement, which contains over 600 agreements to reduce greenhouse gas emissions and was concluded between the government and private parties. The Agreement stimulates



participation in sustainable energy projects. The government has made several commitments to make accessible and responsible financing options broadly available to implement sustainability measures.

*Law stated - 18 October 2022*

## GENERAL GHG EMISSIONS REGULATION

### Regulation of emissions

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

The Climate Act provides that the Netherlands must reduce CO<sub>2</sub> emissions by 49 per cent by 2030 and by 95 per cent by 2050 (compared to 1990 levels). These reduction obligations are binding on the Dutch state but do not apply directly to private parties in the Netherlands. The state elaborates what measures it will implement to achieve these goals, which will be binding on private parties.

Since 2021, GHG emissions have been regulated by the Bill for the CO<sub>2</sub> Tax Industry Act. The CO<sub>2</sub> tax mainly concerns GHG emissions from and for industrial production and waste incineration. The Bill is designed with the aim of achieving the reduction target for industry as agreed in the Climate Agreement, while affecting neighbouring countries as little as possible. The national tax is connected in various places with the EU Emissions Trading System based on Directive 2003/87/EC.

Directive 2003/87/EC on GHG emission allowance trading plays an important role in the removal of GHG emissions in the European Union, including in the Netherlands. A reduction in CO<sub>2</sub> emissions is achieved when the amount of available GHG emission allowance is reduced at the European level. The Directive was implemented by Chapter 16 of the Environmental Act.

The directly applicable Regulation (EC) No. 1005/2009 on substances that deplete the ozone layer aims to phase out the use of this type of GHG emission. With regard to fluorinated greenhouse gas, Regulation (EU) No. 517/2014 aims to phase out the production, consumption and usage of those GHG emissions.

*Law stated - 18 October 2022*

### GHG emission permits or approvals

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

Companies that are obliged to participate in the EU Emissions Trading System must hold an emission permit as from the moment of the first emission onwards. An important condition for obtaining the permit is the drawing up of a monitoring plan that meets all the requirements that follow from Directive 2003/87/EC. The monitoring plan must provide, among other things, information on the company and the methods of measuring GHG. The specific requirements for obtaining a GHG emission permit can be found in the national Regulation on Monitoring Emission Allowance Trading.

*Law stated - 18 October 2022*

### Oversight of GHG emissions

## How are GHG emissions monitored, reported and verified?

The monitoring and reporting of GHG emissions is regulated in Commission Regulation (EU) No. 601/2012. The Dutch Regulation on Monitoring Emission Allowance Trading contains additional rules regarding this process. Companies must explain in their monitoring plan how they will meet the requirements of the rules and regulations regarding GHG emissions and the manner in which they will determine the amount of GHG they emit.

Emissions are mostly determined by calculations, for example, based on the amount and characteristics of the fuel or materials used. An alternative option for companies is to measure their emissions directly at the points of emission (eg, pipes). All the details on GHG emissions are drawn up in an emissions report by the company, which is submitted to the board of the Dutch competent authority, the Dutch Emissions Authority (NEA). The NEA assesses and determines if the verified emissions report is in compliance with the applicable rules and regulations.

*Law stated - 18 October 2022*

## GHG EMISSION ALLOWANCES (OR SIMILAR EMISSION INSTRUMENTS)

### Regime

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

Under the EU Emissions Trading System (EU ETS) (Directive 2003/87/EC), each year emission rights are allocated free of cost to companies that participate in the EU ETS and are, thus, in the possession of a GHG permission permit. Moreover, there are emissions rights, which are sold on the market through auction.

The Dutch GHG emission allowances are auctioned at a joint European auction, which is conducted three times a week by the auction platform EEX. The auction is open to companies that meet the requirements of the auction platform (most of them are obliged to participate in emissions trading as well). Investors, banks and credit institutions can also act as bidders in joint European auctions.

*Law stated - 18 October 2022*

### Registration

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

The GHG emissions allowance is registered and administered at the EU level in the European Registry for GHG emission allowance trading (the CO<sub>2</sub> registry). This is an online system that gives an overview of the emission allowances possessed in the EU ETS. After logging in, users have access to their accounts and can transfer their emission allowances to other accounts through transactions.

An account representative enters an emissions figure in the CO<sub>2</sub> register. If the emissions figure matches the figures in the verified emissions report (which a company is obliged to draft and submit to the Dutch Emissions Authority (NEA) every year), an NEA officer approves the figure. After verification of the emissions figure, companies can determine the amount of emission allowances they must hand in.

*Law stated - 18 October 2022*

## Obtaining, possessing and using GHG emission allowances

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

GHG emission allowances can, under certain circumstances, be obtained by a company free of cost when it possesses a permit based on the rules in the EU ETS system. The allowances are held and surrendered through the European CO<sub>2</sub> registry.

GHG emission allowances can also be obtained at an auction. The Dutch GHG emission allowances are auctioned at joint European auctions, which are conducted three times a week by the auction platform EEX. The auction is open to companies that meet the requirements of the auction platform (most of them are obliged to participate in emissions trading as well). Investors, banks and credit institutions can also act as bidders. The day following the auction, the winning parties receive the emission allowances on their account in the CO<sub>2</sub> register.

Article 16.42 of the Environmental Act states that no rights in favour of third parties can be established on allowances. More particularly, it excludes the establishment of a right of pledge, right of usufruct or the seizure of emission allowances.

*Law stated - 18 October 2022*

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

### Emission allowances trading

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

The EU Emissions Trading System (EU ETS) applies in the Netherlands. It is a market instrument by which the European Union aims to reduce GHG emissions cost-effectively to achieve its international climate targets (see Directive 2003/87/EC). The EU ETS works according to the cap-and-trade principle, which means that the amount of available GHG emission allowances is established at a certain level (the cap), and, to the extent that this level is not exceeded, parties are free to trade their GHG emission rights, which takes place through transactions. Most companies participating in the EU ETS are annually awarded a quantity of emission allowances free of cost. When a company exceeds the amount of emission allowances it holds, it must purchase additional allowances through auctions or trade.

*Law stated - 18 October 2022*

### Trading agreements

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

Emission allowances can be transferred by agreement. Several standard agreements are used. These agreements should be in line with paragraph 16.2.3 of the Environmental Management Act.

*Law stated - 18 October 2022*

**SECTORAL REGULATION****Energy sector**

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

|                             |                  |                 |
|-----------------------------|------------------|-----------------|
| Energy production by source |                  |                 |
| Natural gas                 | 1.162 PJ (74.9%) | 1007 PJ (70.6%) |
| Renewables                  | 240 PJ (15.5%)   | 268 PJ (18.8%)  |
| Oil                         | 78 PJ (5%)       | 66 PJ (4.6%)    |
| Nuclear                     | 35 PJ (2.2%)     | 38 PJ (2.7%)    |
| Other                       | 36 PJ (2.3%)     | 47 PJ (3.3%)    |

|                              |                |                 |
|------------------------------|----------------|-----------------|
| Energy consumption by source |                |                 |
| Natural gas                  | 1.281 PJ (41%) | 1346 PJ (44.0%) |
| Oil                          | 1.166 PJ (38%) | 1117 PJ (36.5%) |
| Coal                         | 344 PJ (11%)   | 269 PJ (8.8%)   |
| Renewables                   | 199 PJ (6%)    | 232 PJ (7.6%)   |
| Nuclear                      | 35 PJ (1%)     | 38 PJ (1.2%)    |
| Electricity (imported)       | 31 PJ (1%)     | 2 PJ (0.1%)     |
| Other                        | 43 PJ (1%)     | 54 PJ (1.8%)    |

Detailed energy saving laws, regulations and covenants apply to different stakeholders in the Netherlands, including rules regarding the energy efficiency of houses and other buildings.

In accordance with applicable environmental rules and regulations, measures must be taken if the measures can be earned back within five years.

More than 1,000 companies from 40 sectors were working on energy savings and CO<sub>2</sub> reduction by 2020 as a part of the covenant on multi-year agreements on energy efficiency.

*Law stated - 18 October 2022*

**Other sectors**

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

Among other more detailed rules and regulations on GHG emissions, the directly applicable Regulation (EC) No. 1005/2009 on substances that deplete the ozone layer aims to phase out the use of this type of GHG emission. With regard to fluorinated greenhouse gas, Regulation (EU) No. 517/2014 aims to phase out the production, consumption and usage of those GHG emissions.

## RENEWABLE ENERGY AND CARBON CAPTURE

### Renewable energy consumption, policy and general regulation

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

In 2020, electricity production from renewable sources increased by 40 per cent year on year. Slightly over one-quarter of Dutch electricity consumption last year came from domestic renewable sources. In 2020, total electricity production from renewable sources amounted to 31 billion kilowatt hours (kWh), up from 22 billion kWh in 2019. Wind turbines accounted for the largest share of renewable electricity generation, namely 45 per cent; biomass accounted for 29 per cent and solar power for 26 per cent.

The basic conditions for energy policy in the Netherlands are largely determined by European frameworks. The aim is that by 2020, 14 per cent of all energy produced will be generated from renewable sources, rising to 16 per cent by 2023. This is outlined in the Energy Agreement for Sustainable Growth , which the government concluded with 40 groups of interested parties, including employers, trade unions and environmental organisations.

The long-term objectives that must be implemented are detailed in the Energy Agenda . It describes the choices to be made and the steps that must be taken in the transition path towards 2050, the year by which, according to the European Green Deal, the European Union aims to be the first climate-neutral continent.

The production of renewable energy is stimulated by subsidies.

Law stated - 18 October 2022

### Wind energy

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

The government aims to stimulate sustainable energy with the Stimulation of Sustainable Energy Production and Climate Transition (SDE++) subsidy, which has a total budget of €5 billion. This subsidy is the follow-up of the earlier Stimulation of Sustainable Energy Production (SDE+) scheme. An SDE++ subsidy compensates the difference between the cost price of the sustainable energy or the reduction in CO<sub>2</sub> emissions and the revenue (if any). This is referred to as the 'unprofitable component'. The SDE++ can only be requested by companies or non-profit organisations, whereas a wind energy project can only apply for the subsidy if the required permits for the wind farm have been granted.

The permits that are required for (the development and operation of) a wind farm are found in various rules and regulations and for which specific procedures apply; however, the competent authority may decide to coordinate all permitting and planning procedures, meaning that these procedures run parallel to each other.

In respect of the required permits, first, the construction of a wind farm must be permitted by the central government, the province or municipality in accordance with the Spatial Planning Act . An environmental permit, based on the Environmental Law (General Provisions) Act , is required to build wind turbines. Building wind turbines may have negative effects on the environment; therefore, the Environmental Management Act provides legislation to protect the environment. For example, in an environmental impact assessment, the effects of the wind farm on the environment and on nearby nature conservation areas are mapped out. Whether an environmental permit will be granted depends heavily on the outcome of the assessment.

The Council of State ruled on 30 June 2021 that an environmental impact assessment must be made for the general standards for noise, shadow and safety that apply for the construction and use of wind farms. The Dutch government will now have to make an environmental impact assessment, which will probably take a couple of years. Until then, these general standards in the Activities Decree and Activities Regulation may not be used for wind farms.

The Electricity Act regulates the production, transmission and supply of electricity. Before building a windmill, an initiator may also need a Natura 2000 permit or an exemption based on the Nature Conservation Act. If the wind farm has a negative effect on the protection of Natura 2000 areas, the project developer must draw up an appropriate assessment that identifies the effects, and it must take measures to mitigate the effects.

The right to operate an offshore wind farm is tendered. The tender procedure includes the issuance of – most of – the permits.

*Law stated - 18 October 2022*

## **Solar energy**

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

In most cases, no permit is required for the installation of solar panels or solar collectors on, for example, a house or other building, provided that the placement thereof is in accordance with the applicable zoning plan.

This does not apply to the construction of an entire solar park. The solar park must be permitted by the central government, the province or municipality following the Spatial Planning Act. Furthermore, an environmental permit, based on the Environmental Law (General Provisions) Act, is required to build a solar park. Building a solar park may have negative effects on the environment; therefore, the Environmental Management Act provides legislation to protect the environment. For example, in an environmental impact assessment, the effects of the solar park on the environment and on nature are mapped out. Whether an environmental permit will be granted depends heavily on the outcome of the assessment.

The Electricity Act regulates the production, transmission and supply of electricity. Before building a solar park, an initiator may also need a Natura 2000 permit or an exemption based on the Nature Conservation Act. If the solar park has a negative effect on the protection of Natura 2000 areas, the project developer must draw up an appropriate assessment that identifies the effects, and it must take measures to mitigate the effects.

There is no national subsidy available for households when purchasing solar panels, as they have shown to be so profitable that subsidies are no longer required (it is, however, stimulated by fiscal law). Until 1 January 2023, households and small businesses can give self-produced electricity back to the electricity grid (netting). From 2023, the netting scheme will be gradually phased out until 2031.

People who generate sustainable electricity together with others cooperatively can receive a discount on energy taxes. For companies, an SDE++ subsidy is in place; the government aims to stimulate sustainable energy with the SDE++ subsidy.

*Law stated - 18 October 2022*

## **Hydropower, geothermal, wave and tidal energy**

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

### **Hydropower energy**

For a hydroelectric power station, a water permit is required. The water permit is based on the Water Act, and

conditions may be included in the permit.

Hydroelectric power stations are subject to the Policy Rule on Water Permits for Hydropower Plants in National Waters . For wave or tidal energy, a water permit, based on the Water Act, is required.

The main focus of the requirements for a water permit regards the protection of fish.

## Geothermal energy

According to the Mining Act , an initiator requires an exploration permit before the first drilling is carried out. If the drilling proves to be sufficiently productive, the exploration licence can be converted into a production licence. One requirement for a production permit is that there is a substantial chance that the minerals within the area in relation to the permit are economically recoverable. A production plan is also required. An amendment to the Mining Act is currently being discussed in Parliament. The amendment introduces a renewed permit system, which pays more attention to the uncertain start-up phase of geothermal energy development. Municipalities and provinces gain more influence on various aspects of a geothermal energy project, including safety and environmental measures and information provision to the general public.

The Mining Act is further developed in the Mining Decree and the Mining Regulation . In addition, environmental permits, based on the Environmental Law (General Provisions) Act, are required.

The government stimulates all forms of sustainable energy with an SDE++ subsidy, which can only be applied for by companies. The government supports companies that drill for geothermal energy through a national Regulation of Subsidies (see paragraph 4.3); if drilling proves to be unsuccessful, the company may qualify for compensation.

*Law stated - 18 October 2022*

## Waste-to-energy

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

Among other environmental permits, waste incinerators must adhere to the rules of waste policy, which are mainly focused on limiting the environmental damage caused by the processing of waste into energy. The Environmental Management Activities Decree regulates the emissions from a combustion plant for the incineration of waste (section 5.1.2).

*Law stated - 18 October 2022*

## Biofuels and biomass

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

An environmental permit, based on the Environmental Law (General Provisions) Act, is required to build a biofuel or biomass plant. Building a plant may have negative effects on the environment; therefore, the Environmental Management Act provides legislation to protect the environment. For example, in an environmental impact assessment, the effects of the plant on the environment and on nature are mapped out. Whether an environmental permit will be granted depends heavily on the outcome of the assessment.

The Electricity Act regulates the production, transmission and supply of electricity. Before building a plant, a party may also need a Natura 2000 permit or an exemption based on the Nature Conservation Act. If the plant has a negative effect on the protection of Natura 2000 areas, the project developer must draw up an appropriate assessment that

identifies the effects, and it must take measures to mitigate the effects.

For companies, an SDE++ subsidy is in place for low-carbon production of renewable fuels for road and water transport. Companies can apply for a subsidy for the production of bioethanol from biomass, bio-LNG from mono-manure fermentation bio-LNG from all-purpose fermentation and diesel and petrol substitutes from pyrolysis oil based on biomass.

*Law stated - 18 October 2022*

### **Carbon capture and storage**

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

There are currently no active carbon capture and storage projects in the Netherlands; however, two large projects (Athos and Porthos) are planned. Both are offshore.

The most important rules are laid down in mining rules and regulations, as well as environmental law and nature protection law. On the European level the most important rules are to be found within Directive 2009/31/EC on the geological storage of carbon dioxide.

*Law stated - 18 October 2022*

## **CLIMATE MATTERS IN TRANSACTIONS**

### **Climate matters in M&A transactions**

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

The production of energy by biomass or biofuel is becoming more politically sensitive, as not all stakeholders consider it an improvement for climate change.

Owing to the earthquakes from the Groningen gas field, the production of gas from other smaller onshore gas fields is monitored intensively by local governments and inhabitants, although the Judicial Department of the Council of State has stated multiple times that the Groningen field cannot be compared with other smaller gas fields.

Onshore wind farms, especially larger ones, are nowadays often confronted with resistance from inhabitants.

With regard to geothermal energy, practice and regulations are developing quickly.

*Law stated - 18 October 2022*

## **UPDATE AND TRENDS**

### **Emerging trends**

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

### **National level**

The government must take additional measures (and perhaps adopt additional rules and regulations) to comply with the ruling in the Urgenda case and international treaties. On 20 December 2019, the Supreme Court ruled in Urgenda that the Court of Appeal was competent to decide that the state must reduce greenhouse gas emissions in the Netherlands by 25 per cent (compared to 1990 levels) by the end of 2020.



A bill that introduces a minimum CO<sub>2</sub> price to companies that produce electricity, falling under the EU Emissions Trading System (EU ETS), is to be approved by the Senate. The aim of the minimum CO<sub>2</sub> price is to encourage companies that produce electricity to a greater extent to take into account the consequences of CO<sub>2</sub> emissions for the climate and the harmful consequences for people and the environment in their choices. A minimum CO<sub>2</sub> price for electricity producers offers long-term certainty about the minimum amount of CO<sub>2</sub> costs that they have to pay, so that they can include this in their investment decisions. The minimum CO<sub>2</sub> price consists of a combination of the CO<sub>2</sub> price resulting from the EU ETS and a national tax.

The district court of The Hague has ordered Royal Dutch Shell to cut its CO<sub>2</sub> emissions by 45 per cent by 2030 compared to 2019 levels, also stating that the Shell group is responsible for its own CO<sub>2</sub> emissions and those of its suppliers. The case is considered a landmark case as the Shell verdict could impact other industrial giants too and cause a wave of climate litigation.

## European level



Another emerging trend that may affect climate rules and regulations in the Netherlands is the European Green Deal. The European Union aims to be the first climate-neutral continent by 2050 and is taking several measures to achieve this goal. For example, the European Climate Law enshrines the target of climate neutrality by 2050 in EU law, and the European Climate Pact involves citizens and sections of society in the fight against climate change. The European Climate Law was presented in March 2020. At the time of writing, the European Climate Pact has not been launched; it is expected to be launched in the final quarter of 2020.

On 17 September 2020, the European Climate Law was amended by the European Commission; an emissions reduction target of at least 55 per cent in 2030 was added. On 8 October 2020, the European Parliament proposed that the European Union's specific climate target for 2030 should be a 60 per cent reduction in emissions compared to 1990 and has adopted further amendments to the proposal. The matter was referred back to the committee responsible for inter-institutional negotiations.

On 14 July 2021, the European Commission proposed the Fit for 55 package. The proposals include the reform the EU Emissions Trading System by lowering the overall emission cap even further and increasing its annual rate of reduction. The Commission is also proposing to phase out free emission allowances for aviation and a separate new emissions trading system is set up for fuel distribution for road transport and buildings. The Renewable Energy Directive will set an increased target to produce 40 per cent of our energy from renewable sources by 2030. The ReFuelEU Aviation Initiative will oblige fuel suppliers to blend increasing levels of sustainable aviation fuels in jet fuel taken onboard at EU airports, including synthetic low carbon fuels, known as e-fuels. Similarly, the FuelEU Maritime Initiative will stimulate the uptake of sustainable maritime fuels and zero-emission technologies by setting a maximum limit on the greenhouse gas content of energy used by ships calling at European ports. Furthermore, a new Carbon Border Adjustment Mechanism will put a carbon price on imports of a targeted selection of products to ensure that ambitious climate action in Europe does not lead to 'carbon leakage'. This will ensure that European emission reductions contribute to a global emissions decline, instead of pushing carbon-intensive production outside Europe. It also aims to encourage industry outside the EU and our international partners to take steps in the same direction.

*Law stated - 18 October 2022*

## Jurisdictions

|   |                       |                                  |
|---|-----------------------|----------------------------------|
|  | <b>Australia</b>      | Johnson Winter Slattery          |
|  | <b>European Union</b> | Allen & Overy LLP                |
|  | <b>France</b>         | Huglo Lepage Avocats             |
|  | <b>Germany</b>        | Enderle Environmental Law        |
|  | <b>India</b>          | Shardul Amarchand Mangaldas & Co |
|  | <b>Indonesia</b>      | SSEK Legal Consultants           |
|  | <b>Malta</b>          | Camilleri Preziosi               |
|  | <b>Netherlands</b>    | Van der Feltz attorneys          |
|  | <b>USA</b>            | Beveridge & Diamond PC           |