



# Vereniging voor Milieurecht

REFIT and Make it Work – Fit and Working for EU  
(Environmental) Law?

› European and Economic Law / Prof. Dr. Hans Vedder



## EU Environmental Law

- › EU Environmental law in the history of EU law
- › The promise and responsibility of EU environmental law
- › Fit?
  - An ever more diverse Union
  - International competitiveness
- › Working?
  - Social sustainability
  - Low transaction costs



## Historical EU environmental law

- › *Titaniumdioxide*
- › Wild Birds Directive
- › *Kraaijeveld*
- › Water Framework Directive
- › *Danish Bottles*
- › IPPC/IED
- › *Wells*
- › Framework Decision on Environmental Crime
- › *Mickelsson & Roos*



## The promise and responsibility

- › EU environmental law promises to
  - complete the internal market and
  - function at the leading edge of governance
- › History and promises make for responsibilities
  - The need to protect the environment
  - At the EU level
  - Without undue distortions of the level playing field



## Fit?

- › A Union that encompasses boreal and sub tropical regions
- › Nearly 100% renewable energy in some regions and 93% coal in others
- › GDP / capita ranging from € 82K to 7K
- › Does everyone *value* the environment as much?
- › Do we need EU-wide uniform standards?



## Working?

- › Is EU environmental law working for the environment?
  - Regulatory distrust
  - NIMBYism
- › An inclusive society?
- › Yet EU environmental law is a no-brainer
- › Provided it does what all law is supposed to do →
- › Legal certainty
- › With great power comes great responsibility



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REFIT and Make it Work – Fit and  
Working for Dutch (Environmental)  
Law?

European and Economic Law / Dr. Lorenzo  
Squintani



# Ongoing discussion:



EU

2025-2030

2030-2035

2040

2050

NL

2020

2020

2030

2050

Systematisation

(Quasi-)Sustainability

Beyond





## Integration and adaptability as sub-optimal forms of sustainability

- › More goal oriented EU environmental law
- › More programmatic approach
- Responsibility rests with Member States
  - Effectiveness & Efficiency
    - **Adaptability**
    - **Legal certainty**



## A fit and working programmatic approach

### › **Actors (A):**

- Which competent authority is responsible?
- What is the role of the Public in the decision-making?

### › **Content (B):**

- What are appropriate measures?
- Which values can be taken into account and to which extent?
- When exceedances must be redressed?

### › **Assessment (C):**

- How is the quality of the environment measured?
- How is the (cost-)effectiveness of the plan measured?



Quick scan:

<b>OMGEVINGSWET</b> <b>(ENVIRONMENTAL AND PLANNING ACT)</b>		ADAPTABILITY		LEGAL CERTAINTY		
		PPP*	Knowledge	Clarity	Enforceability	Judicial protection
PROGRAMMATIC APPROACH	A) Comp Authority	✓	✓	?	✓	?/X
	A) Public participation	X	X	X	X	X
	B) Measures	✓	✓	✓/?	✓/?	✓&X
	B) Values	✓	✓	?	✓	?/X
	B) Deadline	✓	✓	✓	✓	✓&X
	C) Assess Quality	X	X	--	--	--
	C) Assess (cost-) Effectiveness	--	--	--	--	--

\* = People, Profit, and Planet



## Recommendations

- › Regulate international cooperation
- › Regulate cases of ‘orphan’ exceedances
- › Regulate participatory democracy, e.g. use white papers and green papers (Cf. Elverding approach)
- › Insert adaptability clauses as regards the assessment of quality standards and (cost-)effectiveness
  
- › Make sure that explanatory memoranda are as complete and accurate as possible