SEMINAR ORGANISED BY THE GREEK COUNCIL OF STATE IN COLLABORATION WITH ACA-EUROPE

Athens, 10-11 November 2025

Climate change-crisis / Overtourism
Questionnaire

Introduction

In keeping with the Guiding Principle [Leitmotiv] of the Greek presidency of ACA-Europe, the first seminar, which will be held in Athens in November 2025, will focus on the role of the administrative judge when confronted with current challenges related to the climate crisis and the harmful effects of overtourism. The following questionnaire focuses on the six points outlined in the Guiding Principle. The presentation of the regulatory framework in the various countries [international law, European law and national law] and the application of this normative framework by judges in each country will enable us to address questions relating to the effectiveness and relevance of the traditional tools and methods available to judges when they are called upon to rule on disputes concerning the aforementioned challenges.

.....

Part A: Climate change-crisis

I. The regulatory framework

I.A. Supranational rules

I.A.1. Rules of international law

➥ What international instruments [treaties/conventions] relating to climate change are in force in your country?

Kyoto Protocol X☐

Paris Accords X ☐

Aarhus Convention (procedural matters) X ☐

Other (please specify) ☐

➥ What is the formal validity of the aforementioned rules of international law in your country's legal system? (please describe briefly the procedure for incorporating international rules into the legal system)

Some (procedural) clauses in the Aarhus-treaty have direct effect in the Netherlands, so that citizens can rely on these directly. This direct effect is the case, for example, for Articles 9(2) and 6(1)(a) of the Aarhus-Treaty (as explained by the CJEU in ECLI:EU:C:2021:7). Article 9(2) enshrines the right for members of the public to access a review procedure before a court of law or

other independent and impartial body, to challenge both the substantive and procedural legality of decisions, acts or omissions that fall within the provisions of Article 6.

The Kyoto Protocol and the Paris Agreement apply within the national legal order, in the sense that they bind the government and parliament.
The agreements do not have direct effect, in the sense that citizens can directly appeal to these agreements.

I.A.2. EU rules

- Which are the main EU climate change rules that have been incorporated into your national legislation?

Key parts of the EU legal framework concerning climate change is found in regulations (regulation 2021/1119 and regulation 2018/1999). Although parts of Dutch law further develop on these instruments, they do not require transposition into national law. This is different for important parts of the fit for 55-programme, such as directive 2003/87 (ETS), 2023/1791 (EED) or 2023/2413 (RED III).

- Has your country been the subject of proceedings for failure to fulfil its obligations under EU legislation in this area?

Yes.

- If so, please indicate what stage has been reached in the proceedings (warning letters, Commission appeals, rulings by EU courts)

An action was brought for lack of transposition of directive 2023/958. A formal notice was issued to the Netherlands. As of 12.3.2025, the case has been closed without further steps by the Commission. There is currently one pending infringement procedure. This concerns lack of transposition of directive 2023/959. The further status of this procedure is unknown. It is noted that the Netherlands has adopted legislation that is aimed at transposing the concerned directive.

I.B. Rules of national law

I.B.1.1. Does your country have any principles or provisions at constitutional level:

for the protection of the environment in general	X☐
for climate change	☐
for the protection of health	X☐
for the protection of young people or other population groups	☐

1.B.1.2. If so, do these provisions:

Contain only substantive rules? **X**☐

Or do they also establish procedural guarantees? ☐

Do they make explicit reference to: solidarity between generations? ☐

the rights of future generations? ☐

vulnerable groups? ☐

The Constitution guarantees fundamental rights and the democratic constitutional state (general provision). Articles 21 and 22 of the Constitution contain basic social rights in the areas of the habitability of the country and the protection and improvement of the living environment as well as the promotion of public health. These provisions do not make explicit reference to solidarity between generations, the rights of future generations or vulnerable groups.

I.B.2. Has the national legislator adopted specific legal instruments to address climate change issues, apart from the legislation necessary to comply with secondary EU law?

X yes ☐

☐

If so, please briefly mention this legislation, as well as the main content of the relevant substantive and procedural rules.

National Climate Act ("Klimaatwet"): See in particular Article 3 of the Climate Act for the requirements for a Climate Plan: *"a. The measures that are taken to achieve the objectives referred to in Article 2;* *b. the expected share of renewable energy and the expected savings on primary energy use;* *c. the measures that are taken to stimulate the share of renewable energy and the savings on primary energy use;* *d. a consideration of the most recent scientific insights regarding the mitigation of climate change;* *e. a consideration of the development in the technological possibilities to limit greenhouse gas emissions and the related commitment of Our Ministers to innovation;* *f. a consideration of the global and European developments in the field of the limitation of climate change insofar as these are relevant to Dutch policy, and* *g. a consideration of the consequences that the climate policy to be pursued by the government has on the financial position of households, companies and governments, employment including*

education and training of employees, the development of the economy, the realisation of a fair and affordable transition and for the reliability of the energy supply."

See in particular Article 5 of the Climate Act for procedural rules, clause 3:
"The Advisory department of the Council of State will be heard on the climate plan."

See Article 7 for the requirements of the yearly Climate Report:
"a. the overall picture of the implementation of the climate policy as included in the climate plan;
b. a representation per Ministry of the main aspects of the implementation of the climate policy;
c. a representation of the consequences for the departmental budgets of the climate policy;
d. the financial consequences for households, companies and governments of significant developments in the climate policy that deviate from the climate plan;
e. the manner in which the yearly yearly Climate and Energy Outlook is included in the next revision or evaluation of the progress of the climate plan, and;
f. the report on the progress of the implementation of the climate plan, referred to in Article 4, paragraph 2, if this has been carried out."

I.B.3. Does your country have a specific action plan to address climate change?

yes **X** ☐
☐

If so:

- What is the level of planning (national, regional, etc.)?

A Climate Plan ("Klimaatplan") every five years and a yearly Climate Report ("Klimaatnota"), both at the national level.

- Please specify whether this planning is limited to defining policy guidelines (for example: limits on the use of fossil fuels; favouring other forms of energy; support for 'green' investments; improvement of infrastructure, buildings and vehicles - in the public or private sectors; cost sharing for the 'green' transition; special measures for vulnerable population groups; management of climate change-related crises, etc.),
- or whether it also contains binding rules?

Both the Climate Plan and the Climate Report form the basis for policy making. These documents do not contain binding rules.

I.B.4. In your legal system [in the Constitution and/or in the laws] is there an explicit obligation for the State and/or other public-sector bodies to adopt positive measures or avoid certain actions in relation to climate change?

There are no such legal obligations for the State or public-sector bodies.

➥ If so, what is the nature of these measures?

(a) preventive measures

(b) repressive measures

(c) restitution measures

not applicable

➥ Do individuals have any rights to ensure that this obligation is met? If so, under what conditions?

not applicable

➥ Is the legal pursuit of this right regulated?

not applicable

➥ Do individuals have any rights to ensure that private persons comply with similar obligations?

not applicable

➥ Are there specific regulations for the ecological damage caused by climate change?

not applicable

I.B.5. In your country, is the allocation of public responsibilities in the field of climate change subject to regulation?

yes **X** ☐

☐

➥ If so, which are the authorities responsible for managing issues related to the climate crisis [protection against the effects of the crisis and/or disaster management]?

Special Ministry **X** ☐

Legal entity under public law ☐

Other organisational unit ☐

Since the 2nd of July 2024 a special Ministry, named Minister for Climate and Green Growth ("Minister van Klimaat en Groene Groei") responsible for regulations and policy on climate-related issues.

In addition, there are several advisory bodies in the field of climate policy (see also below).

➥ Is there a body responsible for: the collection and processing of scientific data? **X** yes ☐

➥ conducting comparative studies and surveys? ☐

- monitoring the implementation of measures and the achievement of objectives? **X** yes ☐ ☐ **X** yes ☐ ☐
- evaluating research carried out on climate change? **X** yes ☐ ☐

- Netherlands Environmental Assessment Agency ("Planbureau voor de Leefomgeving, or "PBL")
The PBL publishes a yearly Climate and Energy Outlook ("De Klimaat- en Energieverkenning, or "KEV"), which provides data on the progress towards the climate targets. The PBL also publishes other related reports.

- Scientific Climate Council ("Wetenschappelijke Klimaatraad, or "WKR")
The WKR advises the government on climate policy; this Council independently writes reports on climate policy.

- Council of State, advisory department ("Afdeling Advisering van de Raad van State")
The Council of State, advisory department advises on the yearly Climate Report and the Climate Plan every five years.

- If so, please describe the composition and the operating rules of the competent bodies (participation of elected representatives, scientists, guarantees of independence)?

- The Netherlands Environmental Assessment Agency ("PBL") is a research institute that provides strategic knowledge for policy through explorations, analyses and evaluations.

- The Scientific Climate Council ("WKR") is an independent advisory body, that is tasked with advising the government and parliament, both solicited and unsolicited, on climate policy. The WKR's advice has a scientific basis. The council is multidisciplinary and consists of 10 members. They are appointed by the cabinet for a period of 4 years.

- The Council of State, advisory department ("Afdeling Advisering van de Raad van State") is an independent advisory body that advises on legislation and policy, including climate policy.

- What is the nature of power allocated to these bodies (purely advisory power, decision-making power)?

These bodies are purely advisory bodies.

- Is prior consultation with a court or other independent bodies provided for when adopting a regulation concerning climate change?

The Council of State, advisory department must be asked for advice on new climate legislation. Prior consultation with a court is not required.

➥ Is there a provision for public participation in the development of climate action plans or legislation? If so, what form of participation (consultation, other)?

The draft Klimaatplan is submitted for internetconsultation.

➥ Is access to relevant information guaranteed? ☐

X ☐

Citizens dot not have a legal right to information about climate issues.

II. The application of the regulatory framework by the judge

II.A. Have any disputes been brought before the courts in your country that involve, directly or indirectly (as a result of the claims, allegations and arguments of the parties to the dispute), issues related to climate change?

If so:

-Please mention the main categories of cases in which issues related to climate change arise:

(a) cases related to energy sources (conventional/renewable),

(b) cases related to the improvement of infrastructure (buildings/vehicles),

(c) cases related to environmental impact assessment during project authorisation.

- Please mention the important cases brought before the courts in your country and the judgments handed down.

Depending on the circumstances of the case, provided an applicant like a NGO relates to this aspect in the pleadings, the court can consider the climate aspect. For example, the court can do so in its assessment of the need for these projects or in its (restrained) review of the administration's weighing of interests. Also the court can consider this aspect in case the administration has embraced climate goals in its own policy. (a) cases related to energy sources (conventional/renewable), There have been several cases about projects that are related to energy sources. There have been cases about renewable energy sources, such as wind farms, solar parks and biomass power plants. There also have been cases about conventional energy sources, such as gas extraction. In its judgment of 21 February 2018, ECLI:NL:RVS:2018:616 (De Drentse Monden en Oostermoer), concerning a large wind farm, the Administrative Jurisdiction Division (AJD) of the Dutch Council of State, after scrutinizing many grounds for appeal concerning inter alia the consequences for the living environment of local residents, concluded there was no reason for annulment. In other judgments the AJD has ruled that climate change can lead to the determination of imperative reasons of overriding public interest (public safety and public health) as basis for an exemption under the Nature Conservation Act for wind turbines or underground high voltage cables (judgment

of 4 May 2016, ECLI:NL:RVS:2016:1227; judgment of 4 November 2020, ECLI:NL:RVS:2020:2621; judgment of 21 September 2022, ECLI:NL:RVS:2022:2736).

In a case about gas extraction, the applicant argued that the gas company should have been obliged to apply "carbon capture and storage". The court ruled that according to the Mining Act, the minister could not prescribe in the consent decree that the gas company must store CO2 (judgment of 30 March 2022, ECLI:NL:RVS:2022:941).

In a case about a spatial plan for an industrial area, the applicant objected that unjustly the area didn't provide for its own energy needs. The court ruled that in this case there was no obligation to make the industrial area energy neutral or CO2 neutral (judgment of 16 November 2022, ECLI:NL:RVS:2022:3320).

(b) cases related to the improvement of infrastructure (buildings/vehicles),

There have been cases about infrastructural projects that are intended to adapt the country to climate change impacts, such as dike reinforcement and river water storage areas, or projects that are intended to contribute to climate protection, such as the cavity wall insulation of buildings.

(c) cases related to environmental impact assessment during project authorization

There have been cases in which applicants argued that a project would have negative effects for the climate that should have been taken into account in the decision about authorization.

In a case where the applicant stated that a project for the construction of an new highway did not comply to the municipal Climate Plan of The Hague, the court ruled that, given the fact that the municipal climate policy did not set strict preconditions and had objectives that applied to the entire city of The Hague, the administration was allowed to draw the conclusion that, although the project independently only partly met the climate and sustainability objectives, this did not have to hinder the achievement of these objectives in a broader context (judgment of 18 February 2015, ECLI:NL:RVS:2015:448).

In a case about gas extraction the applicant argued that the minister has to comply to climate tasks and must look at sustainability, when assessing possible measures. The court ruled that the assessment framework of the Mining Act does not oblige the minister to take these aspects into account when determining the operational strategy for gas extraction (judgment of 15 July 2020, ECLI:NL:RVS:2020:1665).

The judgment of 23 December 2020, ECLI:NL:RVS:2020:3105, was about a spatial zoning plan that provides for the development of an urban residential area with approximately 1,800 homes, and social facilities. Applicants argue that the plan does not sufficiently take into account the risk of heat stress and the need for climate adaptation. According to them, the council should have adhered to the Delta Programme for Spatial Adaptation that governments have jointly drawn up to make the Netherlands climate-proof and water-robust. The AJD considers that the Delta Programme of the Ministry of Infrastructure and Water Management contains a section entitled Delta Plan for Spatial Adaptation with measures to make the Netherlands climate-proof and water-robust. Partly in response to this Delta Plan, the municipality of Amsterdam adopted the Amsterdam Climate Adaptation Strategy, dated 4 February 2020. The AJD notes that the Delta Plan and the Strategy contain objectives and principles that must be further inventoried and/or elaborated. The arguments

put forward by applicants do not give rise to the conclusion that the council should nevertheless have taken the Delta Plan and the Strategy into account when drawing up the plan.

In a case about the enlargement of a theme park, for which a number of trees had to be felled, the applicant stated this was detrimental to the compensatory effect of trees on CO2 emissions. The court ruled that, although it cannot be ruled out that the felling of trees in the plan area will have some influence on the concentrations of CO2 in the vicinity of the plan area, the community council - also taking into account the mandatory compensation for the timber stand to be felled in the plan area - did not make an unreasonable weighing of interests (judgment of 1 September 2021, ECLI:NL:RVS:2021:1971).

There also was a case in which a permit, issued to Greenpeace for a research expedition to Antarctica, was challenged by a physical person stating inter alia that the emissions of Greenpeace's ships were detrimental to the global climate (judgment of 29 December 2021, ECLI:NL:RVS:2021:3020). However, the court ruled that according to Article 8:69a of the Dutch General Administrative Law Act (GALA) the applicant could not invoke the relevant articles of the Dutch Act for the protection of Antarctica, because the protection of Antarctica is not closely intertwined with the protection of the living environment of applicant's home town.

In another case the municipality council of Amsterdam refused to grant appellant an environmental permit for deepening a basement floor and creating a swimming pool on the basement roof on the plot at a location in Amsterdam. The AJD considers that the building plan is in conflict with the policy rules, because this plan concerns changes to an existing cellar that is deeper than 2.5 m into the garden. The council has *inter alia* explained that the preservation of these inner gardens is not only important for the living environment of residents of the higher floors in particular who benefit from quiet and green inner gardens, but also for climate adaptation, among other things. The policy explains that too much basement construction can have major negative effects on both (rain)water collection and groundwater flows, which can reduce climate resilience. In view of the foregoing, the board could reasonably refuse to grant an environmental permit for the entire construction plan (judgment of 15 December 2021, ECLI:NL:RVS:2021:2835).

In the judgment of 16 March 2022, ECLI:NL:RVS:2022:732, a NGO argued that the municipality council by drawing a zoning plan wrongly ignored, among other things, the poor air quality, heat stress, petrification and the lack of greenery on and around the Pieter Vreedeplein. According to them, a thorough study into the climate effects is lacking. According to the municipality council, the circumstances mentioned by the NGO, such as petrification and heat stress, are circumstances that are common in an inner city and are not so special that the plan could not have been adopted for that reason. The AJD sees insufficient reason to conclude that the council could not reasonably have adopted the plan due to possible negative effects on the degree of heat stress and air quality in the vicinity of the plan area.

In a case about a spatial plan for the building of 33 houses applicants stated that the planned housing construction would cause a peat layer to sink, leading to CO2 emissions from the peat layer. As the community council explained that the peat layer was situated far below groundwater level, which ruled out the possibility that additional CO2 could be released, the court ruled that the weighing of interests about the spatial planning had not been unreasonable (judgment of 23 March 2022, ECLI:NL:RVS:2022:863).

In a case about a provincial zoning plan for the construction of "Maritime Service Port Northern Flevoland", the AJD ruled that the Provincial Council has rightly taken the position that the plan itself cannot include rules relating to sustainability, because a zoning plan can only set rules with spatial relevance. There is therefore no possibility of including environmental requirements such as for the maximum emission of CO2 and other greenhouse gases (judgment of 21 September 2022, ECLI:NL:RVS:2022:2752).

This will be different for a so called "zoning plan with a broader scope". Article 7c of the Decree on the implementation of the Crisis and Recovery Act makes it possible to include rules in the plan that serve to achieve and maintain a safe and healthy physical living environment and good environmental quality and to efficiently manage, use and develop the physical living environment to fulfil social functions. The aim of broadening the scope of the zoning plan is, among other things, to contribute to integral and more flexible zoning plans for the benefit of spatial developments. For example, such a zoning plan may include rules aimed at sustainability or the energy transition (cf. judgment of 19 August 2020, ECLI:NL:RVS:2020:2004). The AJD does not follow the council's position that the possibility of including rules on sustainability is limited to rules that are spatially relevant. However, the aforementioned Article 7c contains a power and not an obligation. Nor is there any other statutory rule that obliges the council to provide for zoning or rules when establishing a zoning plan that stimulate the sustainable development of the plan area,. In this case the plan ", that provided for, among other things, school buildings and a sports hall included rules for nature-inclusive construction, water storage and the creation of green strips. The council was allowed to decide not to include any further rules regarding sustainability (judgment of 24 December 2024, ECLI:NL:RVS:2024:5423).

In a case where the applicant stated that the enlargement of the surface of greenhouses was contrary to the municipal climate goals, the court found that the municipal Sustainability Implementation Program stated that the municipality of Etten-Leur by 2050 wants to be a climate-neutral municipality and that this mainly means that efforts must be made to reduce CO2 in the traffic, industry and energy sectors. According to the court, however, this as such did not mean that the plan to enlarge greenhouses was in conflict with the Sustainability Implementation Program (judgment of 8 September 2023, ECLI:NL:RVS:2023:3400).

In the judgment of 15 November 2023, ECLI:NL:RVS:2023:4236, applicants argued the decision was insufficiently substantiated, because the heat stress analysis only contains a scenario with an easterly wind and therefore the effects of a south(west) wind on their homes have not been mapped out. They pointed out that the study "Winds are changing: An explanation for the warming of the Netherlands" by Hoogeveen and Hoogeveen of 2022 concludes that the wind in the Netherlands has been blowing less and less from the east over the past 30 years and more and more often from the south, west and southwest. The AJD takes into account that, according to Witteveen+Bos, adjusting the wind direction has a very limited effect on the outcome, so that there are no indications that the model with an easterly wind has such defects that it should not have been used in this case.

In a case about an environmental permit for the realization of a vitality hotel, a NGO argues that the feasibility of the realisation of the hotel is uncertain, because a message from the grid operator TenneT makes a preliminary announcement of expected structural congestion for the purchase of

electricity in Zeeland. The project developer pointed out that the plot already has a heavy commercial electricity connection from the previous user. The capacity of this has already been discounted in the calculations of the grid operator and no problems are foreseen in the area of electricity transport. The AJD therefore sees no reason to judge that the project is not feasible due to the capacity of the electricity grid (judgment of 29 May 2024, ECLI:NL:RVS:2024:2225).

In a case about a spatial plan for the construction of 150 houses the AJD noted that the administrative authority should have explained why climate scenario W (the rise of global temperatures by 2°C) was not used in this case. The AJD pointed out that the policy memorandum of the water board, which was advising to the administrative authority, states that "where possible" climate scenario W is used, because the water system can then be made more robust. This was also important in this case because of the existing flooding in the area (judgment of 16 April 2025, ECLI:NL:RVS:2025:1708).

In a another case the municipality council of Rotterdam wants to redevelop the old Rijnhaven transhipment port in the Feijenoord area into a residential area with catering facilities, work functions, a city beach and a city park. Applicants argue that the council has not paid sufficient attention to the climate resilience of the plan. According to them, the climate resilience of the Rijnhaven is under pressure due to the reduction of the water surface and the very high building density and large building height, which will increase heat stress in the area, with health damage for local residents. The plan explanation states that the developments offer good opportunities for the realisation of a city beach where Rotterdam residents can cool off on hot days. The development of the Rijnhaven also includes the construction of a park and a city beach, which means that the plan contributes to reducing heat stress, according to the plan explanation. Due to the presence of the water of the Rijnhaven and after the realisation of the park, according to the municipality council, there will be less heat stress in the plan area than in urban areas without these cooling elements. The AJD sees no indications that the consequences of heat stress in and in the immediate vicinity of the plan area will be such that the council should not have adopted the zoning plan from the perspective of good spatial planning (judgment of 16 April 2025, ECLI:NL:RVS:2025:1726).

II.B. Organisation of the judicial system: Does the system of dual jurisdiction (civil courts for private disputes, administrative courts for administrative disputes) apply in your country?

yes X☐

no ☐

↳ If so, are issues related to climate change dealt with:

-mainly by the administrative courts, when they examine the legality of the actions or omissions of the State and other public entities;

-mainly by the administrative courts, when they examine compensation claims against the State and other public entities;

-mainly by the civil courts (in disputes aimed at protecting the applicant against actions by individuals)?

Mainly by the administrative courts, when they examine the legality of the actions or omissions of the State and other public entities. However, the civil courts have an important role as “residual judge” in cases that

concern factual acts and omissions to take factual acts. Also the civil courts deal with cases against private entities, such as companies.

II.B.1. In your country, does the legislation provide for a specific remedy for cases relating to the climate crisis? If so:

- Which courts have jurisdiction to hear such cases?

Not applicable

- What is the composition of these courts?

Not applicable

- What are the main features of the relevant remedies?

Not applicable

II.B.2. If the answer to the previous question is no [: if your legal system does not provide for a special remedy]:

- Among the remedies generally provided for, which remedies deal mainly with disputes involving issues related to the climate crisis?

actions for annulment against acts or omissions of the State and other public entities **X**☐

full jurisdiction remedies for the recognition of a right **X**☐

actions for damages **X**☐

remedies for the protection of the applicant's personality ☐

procedures for requesting interim measures **X**☐

II.B.3. If your legal system does not provide for a special remedy, are disputes relating to the climate crisis examined:

- by specialised divisions of the courts and/or according to a special procedure yes ☐ no **X**☐

II.B.4. According to existing practice, what is the main legal remedy for disputes relating to climate change?

actions in the administrative courts, aimed at annulment against acts or omissions of the State and other public entities, as far as it concerns administrative decisions and omissions to take administrative decisions, hence excluding factual acts and omissions to take factual acts;

actions in the civil courts, aimed at an order, prohibition, declaration or compensation because of an unlawful factual act of an unlawful omission to take a factual act

II.B.5. In your country, are there seminars or other organised training courses for judges, specifically aimed at issues related to climate change?

The Training and Study Centre for the Judiciary (SSR) does not offer courses for judges on issues related to climate change. However, many universities offer courses in which also judges can take part. For example the Vrije Universiteit Amsterdam offers a Course on Climate Change and Energy Transition, focussing on the legal framework for combating climate change and stimulating the energy transition. Utrecht University offers a course on Spatial planning in a changing climate. Leiden University offers a Course on Climate Change: Local Challenges and Solutions. Also Wageningen University & Research offers a number of climate change courses and programmes for professionals, including a Summer School Climate Information for Adaptation and a course about Tourism and Climate Change.

II.C. In your legal system, does the judicial review of laws and regulations:

- ↳ is exclusively an ultra vires review (review of legality)?
- X or can it also be the subject of a full jurisdiction control?
- X If so, under what conditions?

Judging on an appeal to an administrative decision, the administrative courts can pursue indirect or exceptive review of generally binding provisions (*algemeen verbindende voorschriften*) on which the administrative decision is based. Generally spoken, this is a review whether the provision is in line with higher law, including universally binding treaty provisions, and general legal principles.

As an exception, Article 120 of the Constitution stipulates that courts may not evaluate whether formal laws (formal acts of the legislature, consisting of government and parliament) and international treaties violate the Constitution. Nevertheless, the courts often can assess whether formal laws are in line with human rights enshrined in international treaties (which rights are largely the same as the rights enshrined in the Constitution), due to which the impact of Article 120 of the Dutch Constitution is limited, if not even absent. This follows from Article 93 of the Dutch Constitution that universally binding provisions of treaties and decisions of international organizations can be directly relied upon by individuals and legal persons before the court. Article 120 of the Constitution does not apply to legislation adopted by regional and local authorities or executing bodies. So for this legislation, there is no prohibition for the courts to assess its compatibility with the Constitution. Article 120 of the Constitution is currently politically debated and also the current Dutch government wants to create a Dutch Constitutional Court, an outline of which and the impact on the other high courts is not known yet.

When the courts find a provision to violate higher law or general legal principles, the courts are not able to annul or repeal the provision, but they can declare it non-binding or inapplicable to the case at hand.

II.D. Access to justice and admissibility of appeals:

- Does your legislation provide for specific rules of procedure for disputes relating to climate change?

yes ☐

no X☐

If so:

- which special rules of procedure apply?

- Please indicate the reasons which, according to the legislator, justify the differentiation from the generally applicable rules of procedure.

Although the Dutch legislation does not provide for specific rules of procedure for disputes relating to climate change, it does provide for specific rules of procedure, more generally, for disputes in environmental matters. In the following we will concentrate on these rules.

Competent court (rules of jurisdiction)
Most administrative decisions of a governmental authority must first be brought before a District Court and can then be appealed before the Administrative Jurisdiction Division (AJD) of the Dutch Council of State. For a range of decisions, including in environmental law, the second annex to the GALA appoints the AJD as the judge of first and final instance that is competent to hear the case. This rule applies, most importantly, to cases about 'town and country planning'. Other examples include decisions based on the Nuclear Energy Act and the Mining Act, some decisions based on the Provincial Law Act, decisions based on the Act on the Dutch Water Authorities, and decisions about Wind Energy that is generated at sea.

Entry into force of decisions and suspensory effect of a request for a preliminary injunction
For a number of environmental law decisions, the rules on the entry into force of decisions and the suspensory effect of a request for a preliminary injunction differ from the general procedural rules in administrative law. Decisions on town and country planning do not enter into force until four weeks after the decision was issued, whereas for general decisions, the date of issuance is decisive (see Article 16.78 of the Environmental Law Act). As for environmental permits, the administration can decide under certain conditions that they do not enter into force until four weeks after the decision was issued. If, in accordance with this provision, the entry into force of the environmental permit is delayed, merely submitting a request for a preliminary injunction within the time limit for appeal in a case about this permit already suspends the effects of the contested decision until the judge has decided upon the request for the preliminary injunction (see Article 16.79 of the Environmental Law Act).

Submission of grounds of appeal
Another procedural rule in environmental law that deviates from general administrative procedural rules is that appeals against specific decisions about very large projects cannot be submitted in a preliminary 'pro forma' notice of appeal. Other than for ordinary administrative decisions, all grounds of appeal must be submitted before the expiration of the time limit for appeal, without the possibility to supplement the arguments later on in the procedure (see Article 16.86 of the Environmental Law Act). This restriction is applicable to environmental cases about very large projects, predominantly to avoid that the grounds of appeal are supplemented with endless additional reports and documentation.

Conditions of admissibility (legal standing)
For many governmental projects the relevant legislation requires that decisions are prepared through the public preparatory procedure that can be found in Article 3:10 and further of the GALA. During this procedure, as a general rule 'interested parties' as defined in Article 1:2 GALA can submit a viewpoint on the plans that are presented in the public preparatory procedure (Article 3:15(1) GALA). For environmental law cases, however, this possibility is available to anyone who feels concerned about the development of the draft decisions that are presented in the public preparatory procedure, including but not limited to 'interested parties' that are affected by the plans that are presented (see Article 16.23 of the Environmental Law Act). After the decision is made, only interested parties as defined in Article 1:2 GALA can initiate an administrative appeal (Article 7:1 GALA) and subsequently bring the case before the District Court (Article 8:1 GALA). According to Article 6:13 GALA, interested parties who aspire to appeal the decision before the District Court must have gone through all these stages, including the possibility to submit a viewpoint during the public preparatory procedure. If a party omits to participate in one of these steps, including the public preparatory procedure, according to the GALA the party cannot appeal the decision before the administrative judge. On the other hand, if a party submits a viewpoint in the preparatory procedure of a decision but cannot be qualified as an interested party, according to the GALA the party is not allowed to appeal the final decision before an administrative court. In its judgment of 14 January 2021 in the case of 'Stichting Varkens in Nood', ECLI:EU:C:2021:7, the Court of Justice ruled that these procedural rules violated Articles 9(2) and 9(3) of the Aarhus Treaty. Therefore, in its case law the AJD has adapted the rules on admissibility to the Aarhus Treaty and this judgment, as will be set out underneath.

Other procedural rules
Other procedural rules in the Netherlands for appeals against an individual administrative act in environmental matters do not differ from the ordinary procedural rules in appeals before the AJD. These rules concern, inter alia, court fees, hearings, costs of the proceedings, the judgment, legal aid, order of priority, and presentation of evidence and burden of proof. The rules on these elements of the administrative judiciary procedure are principally the same for ordinary appeal procedures and environmental cases, but their application in practice can be very different. This is due to the fact that environmental cases are often characterized by the involvement of multiple parties, the application of very technical norms and the need for environmental expert opinions to assess the impact of a decision on the environment. Although the procedural rules are the same, in some cases this requires a different approach.

- If the legislation does not provide for specific rules of procedure, please mention any special rules of procedure developed by case-law in your country?

The AJD has adapted the rules on admissibility to the Aarhus Treaty and the judgment of the Court of Justice of 14 January 2021 in the case of 'Stichting Varkens in Nood', ECLI:EU:C:2021:7.

If special rules of procedure developed by case-law exist:

- what are the conditions of admissibility according to case-law rules (legal capacity, legitimate interest in bringing an application before the court, conditions of admissibility linked to the nature of the contested acts or omissions, time limit for lodging an appeal, etc.)
- Please indicate the reasons which, according to the case-law, justify the differentiation from the generally applicable rules of procedure.

The AJD has adapted the rules on admissibility in order to comply with Articles 9(2) and 9(3) of the Aarhus Treaty and the judgment of the Court of Justice of 14 January 2021 in the case of 'Stichting Varkens in Nood', ECLI:EU:C:2021:7.

In the first place, according to this case law of the AJD, the specific procedural requirement (in Article 6:13 GALA) to participate in all stages in order to appeal a decision that was prepared within the public preparatory procedure is inapplicable to cases that fall within the scope of the Aarhus Treaty. However, in environmental law it is unworkable to always distinguish whether a decision falls within the scope of the Aarhus Treaty or not. The AJD therefore ruled that the requirement in Article 6:13 GALA that interested parties can only appeal a decision that affects them before the District Court if they also submitted a viewpoint in the public preparatory procedure, is inapplicable in all environmental law cases, at least until the legislature acted to amend the law in this respect (judgment of 14 April 2021, ECLI:NL:RVS:2021:786). Therefore, in environmental cases, interested parties will be admitted to appeal, also when not having submitted a viewpoint in the public preparatory procedure.

In the second place, according to the case law of the AJD, non-interested parties who submitted a viewpoint in the public preparatory procedure can appeal the subsequent decision before an administrative court. As stated before, for environmental law cases, the possibility to submit a viewpoint in the public preparatory procedure is available to anyone who feels concerned about the development of the plans that are presented in the public preparatory procedure, including but not limited to 'interested parties' that are affected by the draft decisions that are presented. The possibility to appeal a decision after it has been taken by the relevant authority remains limited to 'interested parties' within the meaning of Article 1:2 of the GALA (see Article 8:1 GALA). In the earlier mentioned judgment of 14 January 2021 'Stichting Varkens in Nood', ECLI:EU:C:2021:7, the Court of Justice ruled that this requirement violates Article 9(3) of the Aarhus Treaty, which mandates that anyone who submits a viewpoint in the preparatory procedure of a decision must also be allowed to appeal the final decision before an administrative court, even if the original capacity to submit a viewpoint stems only from national administrative procedural law (see the judgment of the AJD of 4 May 2021, ECLI:NL:RVS:2021:953). The consequence of this jurisprudence is that non-interested parties who submitted a viewpoint can appeal the subsequent decision before an administrative court. The reason behind this admissibility in court is to ensure effective judicial protection of the right to submit a viewpoint in the preparatory procedure. If a person who is not an interested party within the meaning of Article 1:2 of the GALA did not submit a viewpoint in the preparatory procedure, this person is not able to appeal the decision of the governmental authority. Legal standing thus still differs from the legal standing of interested party, because due to the rule derived from the 'Stichting Varkens in Nood' judgment that was discussed in the above, the latter can also appeal if the interested party did not submit a viewpoint in the public preparatory procedure.

II.D.1. More specifically, with regard to legitimate interest in bringing an application before the court:

- Does your legal system recognize the actio popularis (as a constitutional principle or rule, by legislation or case-law)?

As stated before, for environmental law cases, the possibility to submit a viewpoint in the public preparatory procedure by law is available to anyone who feels concerned about the development of the plans that are

presented in the public preparatory procedure, including but not limited to 'interested parties' that are affected by the draft decisions that are presented. According to case law, anyone who submitted a viewpoint in the public preparatory procedure (interested and non-interested parties) can appeal the final decision of the governmental authority. According to case law, interested parties can also appeal if they did not submit a viewpoint in the public preparatory procedure. Non-interested parties who did not submit a viewpoint in the preparatory procedure, are not able to appeal the decision of the governmental authority. So, although the system comes close to an actio popularis, is does not amount to a full actio popularis.

How is the legitimate interest in bringing an application before the court, as a condition for the admissibility of an appeal, defined:

- in relation to certain groups or categories of the population [minors, the elderly or other vulnerable groups more exposed to the effects of climate change];
- in relation to legal persons [public law legal entities, private law entities: associations, etc]?

As a general rule, also in environmental cases, only interested parties can lodge an appeal against a decision that affects them before the administrative court (Article 8:1(1) of the GALA). 'Interested party' is defined as 'a (legal) person whose interests are directly affected by a decision' (Article 1:2 GALA). The general criterion is subject to interpretation by the administrative courts of the Netherlands and in practice includes natural persons, legal entities, associations, NGO's, governmental authorities and public organs.

Dutch law does not designate specific groups of people or organisations as having an interest in bringing an action against an individual administrative act in the environmental field or otherwise. For these groups the general criteria in Article 1:2 GALA apply.

For legal entities, their interests are deemed to include the general and collective interests which they particularly represent in accordance with their objects and as evidenced by their actual activities (Article 1:2 (3) GALA). Associations that represent an interest of a group of people ('bundled interests') are also admitted as an interested party, provided that they meet the criteria in Article 1:2 GALA.

- Concerning the allegations made by the parties to substantiate their interest in bringing proceedings in the disputes in question, what degree of specification is required?

In environmental law, the starting point is that a person who directly experiences actual consequences of an activity that was permitted by a decision with a spatial impact (such as a zoning plan or a permit), is in principle an interested party in that decision. Whether an appellant experiences actual consequences of a decision depends on the specific circumstances of the case. Applicant has to make some statements about the consequences faced of feared for, such as view, odour, noise, light, vibration, emission, risk.

- What standards of proof are required for the allegations made?

The allegations made by the parties to substantiate their interest should be plausible. In a situation in which it cannot be ruled out that a person will experience actual consequences of a decision, the person in principle is an interested party in that decision. The criterion 'consequences of some significance' serves as a correction to the aforementioned starting point. Consequences of some significance are absent if the consequences can be determined (or cannot be ruled out), but the consequences of the activity for the living, residential or business situation of the person concerned are so minor that a personal interest in the decision is lacking. In doing so, attention is paid to the factors of distance to, view of, spatial planning impact of and environmental consequences (including odour, noise, light, vibration, emission, risk) of the activity that the decision permits,

whereby these factors are considered in conjunction with each other if necessary. The nature, intensity and frequency of the actual consequences can also be important.

It must be noted, however, that even when parties make plausible allegations to substantiate their interests, this does not mean these interests are protected by law and can be successfully invoked by a private person. According to Article 8:69a GALA the administrative court shall not annul a decision on the grounds that it is contrary to a written or unwritten legal rule or a general legal principle if that rule or principle is clearly not intended to protect the interests of the person invoking it.

In a case about a decision to adopt a zoning plan that provided for adding a second building plot, the AJD ruled there was no connection between what the appellant, who lives near the plan area, has stated about the lack of safeguarding sustainability ambitions in the plan for the new homes on the one hand and an interest in which he is at risk of being harmed as a result on the other hand. In view of Article 8:69a GALA, he cannot rely on the failure to safeguard this aspect (judgment of 10 May 2023, ECLI:NL:RVS:2023:1840).

II.D.2. Nature of the contested acts or omissions:

- What are the categories of cases brought before the courts in disputes concerning climate change?

There are cases about projects that are intended to contribute to climate protection, such as wind farms, solar parks and biomass power plants (energy transition), use of residual industrial heat, CO2 storage and cavity wall insulation. These projects consist of measures that help to reduce CO2 emissions.

Also there are cases about projects that are intended to adapt to climate change impacts, such as dike reinforcement and river water storage areas.

Furthermore there are cases about projects that have (potential) negative effects on climate change, such as power plants, industrial installations, highways, buildings, farms.

- What are the admissibility requirements for taking legal action against omissions in disputes concerning climate change?

The administrative courts have competence to judge about omissions to take administrative decisions, hence excluding omissions to take factual acts. The admissibility requirements do not differ from appeals to administrative decisions.

- Have the courts in your country been asked to examine questions of cross-border interest [parties to the dispute resident or headquartered in another country, acts or omissions with environmental impacts in another country]?
- If so, how were these disputes handled [limitation of liability only for actions or omissions within the borders of the State or recognition of liability also for actions outside the borders]?

The interim judgment of 16 April 2014, ECLI:NL:RVS:2014:1312, and the final judgment of 9 September 2015, ECLI:NL:RVS:2015:2848, concern a case about a permit based on the Nature Conservation Act 1998 for a power plant on a location at Eemshaven, not far from Germany, to which Dutch and German NGO's and German municipalities appealed. The AJD ruled that the Dutch competent authority can only grant a permit for the project to the extent that it has effects on the Natura 2000 areas located in the Netherlands, if it has also obtained certainty that the project will not affect the natural characteristics of the Natura 2000 areas

located outside the Netherlands (such as in Germany). For the assessments of the consequences of the increase in nitrogen deposition in the German Natura 2000 areas, the Dutch competent authority used the method that is applied in practice and is common in Germany. Also in view of Article 4, paragraph 3, of the Treaty on European Union, the authority was therefore in principle entitled to assume that this method was in accordance with Article 6, paragraph 3, of the Habitats Directive.

In the judgment of 27 December 2017, ECLI:NL:RVS:2017:3578, the AJD considered that for the assessments of the consequences of the increase in nitrogen deposition in the Flemish Natura 2000 areas, the Dutch competent authority used the method that is applied in practice and is common in Flanders. Also in view of Article 4, paragraph 3, of the Treaty on European Union, the Dutch competent authority could in principle assume that this method was in accordance with Article 6, paragraph 3, of the Habitats Directive. The argument fails.

The judgment of 24 February 2016, ECLI:NL:RVS:2016:465, concerned a ministerial spatial planning decision for the construction of a new, approximately 22-kilometre long 380 kV high-voltage connection between Doetinchem and the border with Germany at Voorst. The new connection was intended to continue across German territory to Wesel. The AJD ruled inter alia that the requirement that all parts of the project must be covered by an Environmental Impact Assessment was met in this case, because an EIA has been or is being drawn up for both the Dutch and German parts of the route and these reports together cover the entire project. This requirement does not go that far that in all cases one cross-border EIA must be drawn up. It is therefore not considered unlawful in general terms that a separate EIA is drawn up per country. In that case, each of the reports to be drawn up must pay attention to the possible environmental effects that the project, insofar as it is situated on one side of the border, may have on the other side. Furthermore, any cumulative effects of the project components on both sides of the border must be described.

In the judgment of 4 March 2020, ECLI:NL:RVS:2020:682, a case was adjudicated in which the effects of a zoning plan on the nearby German Natura 2000 areas were investigated using the assessment system as applied in Germany. The German competent authority was asked to investigate whether there are cumulative effects in accordance with the German assessment method. It was stated that there are no projects in Germany that could cause a significant negative effect in combination with this project. The Dutch authority was allowed to rely on this information and did not need to carry out further research.

In the judgment of 20 October 2021, ECLI:NL:RVS:2021:2304, the AJD pointed out that the Belgian Council for Permit Disputes, in its judgment of 25 February 2021, ruled that the Flemish nitrogen assessment method, in which a contribution of less than 5% to the deposition of nitrogen oxides is regarded as "not significant", is not in accordance with Article 6 of the Habitats Directive. In view of this, the AJD ruled that the Dutch authority could not assume that this method for assessing the consequences of the increase in nitrogen deposition in the Flemish Natura 2000 area is in accordance with Article 6, paragraph 3, of the Habitats Directive.

From these judgments it shows that the AJD was asked to examine questions of cross-border interest in cases with parties to the dispute who were resident in another country, as well as cases of acts with environmental impacts in another country. These cases are not about liability, but they do show that Dutch authorities are also responsible for the assessment of effects outside the borders. In principle, the assessment frameworks that are customary in the other state can be used for this purpose, even if they differ from and are less strict than the assessment frameworks used in the Netherlands.

II.E. Nature, extent and intensity of judicial review:

- In matters of climate change, how does the judge consider the delimitation of jurisdictional control in relation to:

  -the political choices made by the legislator or the administration?

  -the balancing of contradictory interests?

  -assessments of an essentially technical nature?

All these three factors can induce a margin of appreciation or discretionary power for administrative authorities, leading to restraint in jurisdictional control. A margin of appreciation is enshrined in legal terms of which the application requires political or expert valuation. A discretionary power is recognisable by the use of words such as 'can', 'may', 'is authorized' and the like, When an administrative body has a margin of appreciation or a discretionary power there is so called decision latitude: within the limits of the margin of appreciation or the discretionary power, the administrative body can choose how to apply the legal term and whether, and if so, how it makes use of the power. A characteristic of decision latitude is that the administrative authority must weigh up the interests in a specific case when applying it. Completely 'free' and completely 'bound' decisions do not occur, but there are many degrees in between. Any administrative decision, however, must comply with the proportionality principle. When assessing the proportionality principle, the standard of the so-called Harderwijk judgment applies (judgment of 2 February 2022, ECLI:NL:RVS:2022:285). This means that the AJD assesses whether the decision is suitable and necessary, and then whether the decision is balanced in the given circumstances. Whether these three elements are addressed by the AJD depends on the grounds for appeal submitted.

II.E.1. On the balancing of conflicting interests, please give examples from the case-law in your country when the conflict concerns:

-environmental protection, and in particular protection against the effects of climate change, on the one hand;

-the protection of private assets and interests, on the other hand.

Depending on the circumstances of the case, provided an applicant like a NGO relates to this aspect in the pleadings, the court can consider the climate aspect. For example, the court can do so in its assessment of the need for these projects or in its (restrained) review of the administration's weighing of interests. Also the court can consider this aspect in case the administration has embraced climate goals in its own policy.

Up to now, however, these considerations cannot set aside the need to comply with environmental standards concerning other aspects, such as air pollution, water pollution, odour, noise, safety, protection of species, etcetera. Therefore, if applicants such as local residents relate to these aspects in their pleadings, the AJD will assess whether these environmental standards are met. This means that non-compliance to these standards can lead to the annulment of the decision that allows a project aimed at climate.protection, such as a wind farm, solar park, CO2 storage, dike reinforcement or a high-voltage connection to meet higher electricity demands.

The same applies when a NGO relates in its pleadings to other environmental aspects than the climate aspect. For example, in a case about a project for CO2 storage (interim judgment of ABRS of 2 November 2022, ECLI:NL:RVS:2022:3159 and judgment ABRS of 16 November 2023, ECLI:NL:RVS:2023:3129), the AJD has ruled that the administration had to make an individual assessment of the consequences on nitrogen emissions while building the storage. This was not set aside by the beneficial effects of CO2 storage for the climate.

Of course, it depends from the circumstances of the case whether the assessment of other environmental aspects than the climate aspect does or does not lead to the annulment of the decision that allows a project

aimed at climate protection. In its judgment of 21 February 2018, ECLI:NL:RVS:2018:616 (De Drentse Monden en Oostermoer), concerning a large wind farm, the AJD after scrutinizing many grounds for appeal concerning inter alia the consequences for the living environment of local residents, concluded there was no reason for annulment.

The mere fact that among local residents there is insufficient support for the project, is no reason for annulment of the decision. As the Division considered in the judgment of 23 October 2024, ECLI:NL:RVS:2024:4286, there is no statutory rule that stipulates that a spatial plan may only make a development possible if there is sufficient support for it in the area. The fact that there is insufficient support for the zoning plan, regardless of whether that is the case, cannot therefore in itself lead to the conclusion that the council was unable to allow the project.

Furthermore, it is possible that administrative authorities impose a toleration obligation on a private land owner in connection with the implementation of a project plan for, for example, dike reinforcement or a wind farm. The authority needs to make sufficient attempts to obtain permission for the implementation of the project plan and the related works on the plots of land concerned. It does not follow from Article 5.24 of the Water Act that compensation for damage in general is a condition for being able to impose a toleration obligation. The duty of tolerance may only be imposed if the interests of the entitled parties do not require expropriation. In the judgment of 21 August 2024, ECLI:NL:RVS:2024:3418 (West Betuwe), it was considered that the administrative authority could reasonably take the position that the plots do not need to be expropriated, because their usability is not permanently affected.

- Can the judge limit the temporal effects of an annulment decision [example: limitation of the retroactive effects of an annulment decision] based on the balancing of conflicting interests?
- If so, under what conditions?

According to Article 8:72(3) GALA the court may determine that all or part of the legal consequences of the annulled act shall be allowed to stand. It appears that the court can as well determine that legal consequences of the annulled act shall be allowed to stand temporarily or retroactively. Furthermore, Article 8:72(5) GALA determines that the court, in addition to an annulment, may grant provisional relief. The administrative court shall determine at which moment in time the provisional remedy shall cease to have effect. The conditions for the application of these judicial instruments are not stated explicitly in the GALA, the circumstances of the case are leading.

II.E.2. Technical and scientific judgments:

- Please give examples from case-law concerning the criteria and methods used by judges to rule on disputes involving technical and scientific judgments.

The cases administrative law courts deal with are always tied to a specific decision (or lack thereof) of the public authorities. When preparing a decision, the administrative authority has to gather the necessary knowledge about the relevant facts and the interests to be weighed (Article 3:2 GALA). When making a decision the administrative authority shall weigh the interests directly involved, unless a limitation to do so follows from a statutory regulation or the nature of the power being exercised. The adverse consequences of the decision for interested parties may not be disproportionate to the purposes to be served by the decision (Article 3:4 GALA). A decision of an administrative authority must be based on proper and stated reasons (Articles 3:46 and 3:47 GALA). Therefore it is up to the administrative authority, if necessary, to provide scientific justification for why the decision was taken. As the AJD considered in, for example, the judgment

of 17 March 2021, ECLI:NL:RVS:2021:562, the administrative authority may rely on the advice of an expert after it has checked whether this advice was prepared with due care, the reasoning therein is comprehensible and the conclusions drawn are in line with it. This obligation is laid down in Article 3:9 GALA for the legal advisor and follows from Article 3:2 GALA for other advisors. If a party has put forward concrete starting points for doubting the care with which the advice was prepared, the comprehensibility of the reasoning followed in the advice or the alignment of the conclusions therewith, the administrative authority may not rely on the advice without further reasoning. If necessary, the administrative authority will ask the advisor for a response to what a party has stated about the advice. The administrative law court assesses whether these conditions are met. In case the response does not remove the doubts, according to Article 8:47 GALA the court is allowed to appoint an expert itself and obtain expert evidence through its expert opinion.

- Does the judge have the specific tools required to exercise the above mentioned control effectively and efficiently [assistance from specialised scientists, appointment of experts, amicus curiae]?

As stated before, Article 8:47 GALA allows the court to appoint an expert and obtain expert evidence through its expert opinion. In the field of environmental law, the AJD often relies on expert opinions of the Administrative Jurisdiction (Environment and Spatial Planning) Advisory Foundation (STAB). This is an impartial expert organisation which, on request, advises the AJD and other courts on disputes concerning the physical environment. Its advices are mostly used for technically complex factual circumstances, such as measuring the damaging effect of an activity on the environment. Its advisers are trained as engineers, technicians, chemists, biologists, etc. They carry out investigations and prepare reports. These investigations consist of file research, site inspections and talks with all parties to the dispute. STAB presents its findings in the form of an expert report to the AJD, which then gives the parties concerned the opportunity to respond to the report before the case is heard in court.

According to Article 8:12b (1) GALA the AJD may, in cases that are being dealt with in a multi-member or large chamber, give persons other than the parties the opportunity to submit written comments within a period to be determined by the board ("amicus curiae"). In its judgment of 2 August 2023, ECLI:NL:RVS:2023:2969, applied this instrument in a case about post-insulation of cavity walls. This kind of insulation is one of the ways in which CO2 emissions can be reduced and climate goals can be achieved. At the same time, post-insulation can have adverse effects on various protected bat species. Potentially conflicting interests are at play in this case: on the one hand, the interest in achieving climate goals and the financial and economic interests of homeowners and companies that focus on post-insulation, and on the other hand, the interest in species protection. In view of these potentially conflicting interests, the desire to gain insight into the consequences of post-insulation of cavity walls for bats, the consequences of the research obligation in question for private individuals in particular who wish to post-insulate their homes and the possible existence of alternative methods, the AJD has applied the amicus curiae procedure. The AJD received 20 responses from natural persons and 26 responses from various organisations. These organisations were companies in the post-insulation sector, ecological research agencies, ministries, provinces, housing associations, the construction sector, associations and foundations that are committed to species protection, associations that represent the interests of homeowners and associations that represent the interests of municipalities.

II.E.3. In the judicial review, how is the diversity and complexity of the factors contributing to the phenomenon of climate change evaluated?

This question has not yet been addressed in the case law of the AJD.

II.F. Civil liability of the State

- With regard to compensation claims, has your country's case-law considered disputes involving the civil liability of the State for damage attributed by applicants to climate change? yes X☐ no ☐
- If so: to address the relevant issues, does the judge simply apply the standard provisions and methods, for example with regard to proof of damage, causal links or methods of compensation for damage,
- or does he apply specific rules?

No specific rules apply. For example farmers filed claims in the civil courts against the water boards in order to be compensated for water damage. Their fields had been flooded, which made them lose their harvest. However, their claims were dismissed.

- What is the content of the specific rules and their legal basis?

Not applicable

- With regard to ecological damage, how are questions of causality dealt with?

Regarding ecological damage, the general doctrine concerning causality is applicable. Its main principle is "attribution according to reasonableness".

- Is monetary compensation recognised regarding compensation for non-material damage caused by ecological damage? yes X ☐ no ☐

In general monetary compensation for non-material damage is recognized in the Dutch legal system. Basically.it can not be ruled out that under certain circumstances monetary compensation for non-material damage could also be granted in case of non-material damage caused by ecological damage.

- Does the 'polluter pays' principle apply to disputes concerning climate change?

This question has not yet been elaborated in case law. Basically, the principle could be applicable to disputes concerning climate change, but its application will most probably raise very difficult questions of causality**.**

II.G. Provisional judicial protection [interim measures]

- How are requests for provisional judicial protection in climate change cases handled? What parameters are taken into account by the courts?

These requests are handled on the basis of the same criteria as other requests for interim relief: i.e. on the basis of a provisional judgment of legality or on the basis of a weighing of interests.

- Please mention the measures that the judge may order.

suspension, order, prohibition, being deemed to have a permit

➥ How does the judge consider the ecological damage alleged by the parties?

on the basis of a provisional judgment of legality or on the basis of a weighing of interests

II.H. Regarding the enforcement of a court decision:

➥ Is there a procedure for checking whether the legislator and/or the administration have adopted the necessary measures to comply with a court decision?

The GALA does not provide for a special procedure that concerns the request for the integral execution of the sentence in the situation where it appears that the administrative authority (or the legislator) does not comply with a judgement (after the judgment has been handed down). The only general possibility provided for by the GALA to ensure the enforcement of its judgments is that the administrative court may determine, in its judgement on the merits, that as long as the administrative authority does not comply with that judgment, an astreinte (to be fixed in the judgment) shall be payable by the legal entity designated by the court to a party designated by the court (see Article 8:72(6) GALA).

➥ In case-law, what are the most striking examples of the methods used to monitor the enforcement of judgments in disputes relating to acts or omissions linked to climate change?

Not applicable; there are no procedures that enable or assign the administrative courts to monitor the enforcement of their judgments.

III.A. In your country:

➥ Are there any court decisions that have explicitly recognised the obligation of the State [and/or other public entities] to take positive measures to address climate change?

Well-known is the Urgenda-case (judgment of the Dutch Civil Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2007). In the Urgenda-case, the Supreme Court ruled that the Court of Appeal was allowed and could decide that the Dutch State is obliged to achieve a 25% reduction in greenhouse gas emissions by the end of 2020, on account of the risk of dangerous climate change that could also have a serious impact on the rights to life and well-being of residents of the Netherlands. The Supreme Courts notes that Paris Agreement of 2015 explicitly states that the contracting parties aim to limit global warming to 1.5˚ C. All in all, there is a large degree of consensus on the urgent need for a reduction in greenhouse gas emissions by at least 25-40% by 2020 by the Annex I countries. The consensus on this objective must be taken into account when interpreting and applying Articles 2 and 8 ECHR. The urgent need for a reduction by 25-40% by 2020 also applies to the Netherlands individually, according to the Supreme Court. In the Urgenda judgment the Supreme Court ruled that the District Court's order, upheld by the Court of Appeal, does not amount to an order to take specific legislative measures, but leaves the State free to choose the measures to be taken in order to achieve the 25% reduction in greenhouse gas emissions by 2020. This is not altered by the fact that many of the possible measures to be taken will require legislation, as argued by the State. After all, it remains for the State to determine what measures will be taken and what legislation will be enacted to achieve that reduction. The Supreme Court also ruled that because of the exceptional situation (the threat of dangerous climate change and that measures are clearly urgently needed), the State is obliged to do

'its part' in this context. This duty follows from Articles 2 and 8 ECHR. In this case, therefore, the Court of Appeal was allowed to rule that the State is in any case obliged to achieve the greenhouse gas emissions reduction of at least 25% by 2020. The Supreme Court does not follow the State's argument that it is not for the courts to make the political considerations necessary for a decision on the reduction of greenhouse gas emissions.

- Are there any court decisions recognising a right to ensure compliance with this obligation?

Not directly, but in its judgment of 22 January 2025, ECLI:NL:RBDHA:2025:57, in a case that is indirectly related to climate protection, the District court of The Hague imposed a penalty on the state. In short, the court concludes on a request made by Greenpeace that the State is acting unlawfully by not stopping the deterioration of nitrogen-sensitive nature in Natura 2000 areas in time and by not achieving the statutory nitrogen targets for the end of 2025 and very likely not for the end of 2030. The court recommends that the State adhere to the statutory nitrogen target for 2030, which means that the State must bring 50% of the surface area of nitrogen-sensitive nature under a specific limit value by 31 December 2030 at the latest. In doing so, the State must, unlike the State has done so far, give priority to the most vulnerable nature. If the State does not achieve this target, the State must pay a penalty of 10 million euros to Greenpeace.

- If a relevant case-law rule has been formulated, on what legal basis?

The legal basis consists of Article 6:162 of the Civil Code ("unlawful act") on the one hand, and Articles 2 and 8 ECHR on the other hand.

III.B. If the courts in your country have already considered issues relating to climate change:

- Do the relevant decisions refer to existing practice in another legal system, for example to the case-law of national judges in other countries or to the case-law of judges in supranational bodies:
  - -dialogue between the national courts of different countries
  - -dialogue between the courts of your country and the European Union judge
  - -dialogue between the courts in your country and the ECtHR
  - -dialogue between the courts in your country and the bodies of other international organisations [for example the UN]?

-dialogue between the courts and the ECtHR

-dialogue between the courts and the bodies of other international organisations

III.C. In your country's case-law, is the obligation to act against climate change considered mainly:

- as an obligation based on national law
- or as an obligation under international law?

mainly as an obligation under international law

- Within the case-law, can we find decisions aimed at harmonising the rules of international law, European law and national law?

as far as we know there are no such decisions

➥ In your country, have any court decisions considered the Paris Agreement to be a legally binding instrument?

Court decisions have considered the Paris Agreement to be legally binding for the contracting parties, but the Paris Agreement does not have direct effect.

III.D. Does the approach of the courts in your country align with the approach of the ECtHR in *Verein Klimaseniorinnen Schweiz v. Switzerland*? [please mention any differences]

The approach of the Dutch courts on Articles 2 and 8 ECHR aligns with the approach of the ECtHR, This follows form the aforementioned judgment of the Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2007. In its judgment of 12 November 2024, ECLI:NL:GHDHA:2024:2099, the Superior Court of The Hague has established, on the basis of objective indications, that Shell has an obligation to combat dangerous climate change. Although this judgment concerns a claim of a NGO against a private entity, the court explicitly relates to the judgment of the ECtHR in *Verein Klimaseniorinnen Schweiz v. Switzerland*.

III.E. Have the courts in your country referred questions to the CJEU or the ECtHR for a preliminary ruling on matters directly or indirectly related to climate change?

No

Part II: Overtourism

I. The regulatory framework [the rules of law]

I.A. Have the negative effects of the excessive development of tourist activity been adressed by the legislator and the courts of your country, following concerns discussed in the public debate? yes **X** ☐ ☐

➥ If so, what are the problems envisaged in the legislation and case-law on this subject?

saturation capacity of urban and non-urban space ☐

deterioration of living conditions in urban areas (increase in housing prices, lack of properties to rent especially for younger generations and/or families with low and medium incomes - particularly in city centres, on islands and in other tourist destinations, deterioration of traffic conditions, insufficient infrastructure, increase in energy consumption, etc.) ☐

overexploitation of natural resources (increased density due to the construction of hotels and other buildings for tourism in extra-urban areas, intensification of land use - particularly in coastal areas and the islands, insufficient infrastructure in small villages, effects on protected landscapes and/or on historical sites and/or archaeological sites and monuments) ☐

other problems ☐

Some of the problems envisaged in the legislation and case-law are:

- Liveability issues in particular in Amsterdam, such as housing problems, abundance of shops, nuisance caused by tourists etc.
- Public order problems in coastal holiday areas
- Nuisance problems around major summer festivals in the Netherlands

Regulation on these issues mainly take place at the municipal level (regulations on spatial planning, public order, housing etc.)

I.B. Has your country taken an initiative/participated in a collective initiative for the establishment, within the EU, of a regulatory framework to address the adverse effects of 'hypertourism'?

If so, what is the content of the proposed measures?

Not applicable.

I.C. Are there any relevant principles and guidelines at international level?

- If so, have they been recorded:

-in binding texts?

-in non-binding texts?

- Could non-binding texts serve as a basis for regulations [please give examples]?

Not applicable.

I.D. In your country, are there any constitutional principles or provisions that can serve as a basis for dealing with issues related to overtourism?

Not applicable.

I.E.1. Has the national legislator established a regulatory framework specifically designed to address the problems resulting from excessive tourist activity?

□

no **X** □

- If so, please summarise the legislation adopted and the main content of the relevant regulations (for example preventive and/or repressive measures, other provisions)

Regulation on overtourism mainly takes place at the municipal level.

I.E.2. Does your country have a special action plan to address the problems resulting from excessive tourist activity?

□

no **X** □

➥ If so, does this plan establish guidelines for the policies to be followed or does it also contain binding rules?

➥ What is the level of planning [national, regional, etc.] ?

I.E.3. In your country, are there any regulations concerning:

-the allocation of responsibilities for the management of 'hypertourism'? ☐

-other provisions concerning the organisation of the competent authorities?

☐

Not applicable.

➥ What are the responsibilities assigned to the various bodies (advisory, decision-making)?

Not applicable.

➥ Are there any provisions for public participation in the adoption of action plans or laws? ☐

no **X** ☐

II. The application of the regulatory framework by the judge

II.A. Have issues related to 'hypertourism' been the subject of litigation in your country?

yes ☐X

no ☐

➥ If so, what points were raised in the arguments of the parties to the dispute? yes ☐X

no ☐

Nuisance caused by tourist stores, canal tour boats, cruise ships, airbnb rental rooms.

➥ Please summarise the landmark cases heard by the courts in your country and the decisions handed down.

The municipality of Amsterdam took action against a new tourist cheese shop that had been opened in violation of the rules. The municipality of Amsterdam wants to prevent the shopping offer in the city centre from becoming ever more impoverished because more and more shops are opening that specifically target tourists. According to the municipality, this so-called monoculture creates the feeling that the city 'no longer belongs to the people of Amsterdam'. That is why the municipality, in anticipation of a new zoning plan, has established rules to prevent new tourist shops in the city. The AJD ruled that the ban on the establishment of new tourist shops in the city centre is not in conflict with the European Services Directive. This ban does not distinguish between domestic and foreign companies. The municipality could consider the ban necessary for the liveability of the city. In addition, the approach to tourist shops is suitable for achieving greater diversity in the range of shops and does not go further than necessary. The municipality also had no other, less drastic

measures available to achieve the same result. As such, the establishment ban constitutes a "justified and proportionate restriction on the freedom to provide services", according to the AJD. Nevertheless, However, enforcement action against the store was disproportional in this case. The company had already been busy setting up the shop for a long time before the ban on new tourist shops came into effect (judgment of 19 December 2018, ECLI:NL:RVS:2018:4173).

In another case, a canal tour boat company appealed against a decision by which operating licences for passenger transport vessels were changed from licences for an indefinite period into licences for a fixed period. The municipality has based the volume policy *inter alia* on the importance of liveability, as a compelling reason of general interest according to the European Services Directive. The AJD noted that the studies submitted by the board clearly show that Amsterdam is busy. The study 'Visitor Forecast and Scenarios 2030' shows that the expectation is that the number of tourists in the city will increase significantly up to 2030. However, the AJD is of the opinion that all the research reports submitted by the board do not show that passenger shipping is partly responsible for some of the nuisance experienced by residents in the city and that it is therefore partly the cause of the pressure on the quality of life. The research reports mainly show that the nuisance comes from *pleasure* boating, with residents experiencing nuisance from, among other things, shouting passengers, excessive drinking and excessively loud music. No document shows that *passenger* shipping puts pressure on the liveability of Amsterdam. The Department also notes that some nuisance in the city centre is inherent to living in a busy city like Amsterdam. Furthermore, the board wants a balance between facilities for residents and facilities for tourists, but nowhere does it appear that the supply for passenger shipping and facilities for residents is out of balance. Without further motivation from the board, liveability cannot be used as a basis for the justification of the volume policy (judgment of 25 September 2024, ECLI:NL:RVS:2024:3732).

In a case about a zoning plan for the remaining construction options on a quay (Wilhelminakade) in Rotterdam, appellant argues, among other things, that the zoning plan wrongly does not set clear limits to the growth ambitions of cruise shipping and does not elaborate on structural measures for cruise shipping. The AJD rules that these aspects cannot be assessed substantively in these proceedings. The pleadings on cruise shipping cannot be included in the assessment of the zoning plan, because the zoning plan does not relate to this and does not have to relate to it in legal and planning terms. The zoning plan does not change cruise shipping and does not result in an increase in cruise shipping. However, the council must include the effects of cruise shipping in the assessment of the partial aspects of the zoning plan, such as air quality (judgment of 30 August 2023, ECLI:NL:RVS:2023:3305).

In a another case the municipality council wants to redevelop the old Rijnhaven transhipment port in the Feijenoord area into a residential area with catering facilities, work functions, a city beach and a city park. Appellant argues that the future intensification of cruise activities on the Wilhelminapier, resulting in heavy transport to and from the Wilhelminapier, should have been taken into account form a point view relating to air pollution. The AJD rules that the calculated values for nitrogen and particulate matter in the Air Quality 2021 note are well below the limit values. In view of this, the AJD sees no reason to assume that the mere fact that various activities - including the alleged intensification of cruise activities at the Wilhelminapier - in the vicinity of the plan area may not have been included in the calculations, will lead to the conclusion that these activities, together with the anticipated activities, will lead to an exceedance of the limit values. In this regard, the AJD takes into account that it is also undisputed that cruise ships at the Wilhelminakade will be able to use shore power from mid-2025. As a result, the cruise ships no longer have to run their engines to produce electricity. It is also undisputed that a generator ban for cruise ships at the Wilhelminapier will be introduced in the short term and that shore power will be mandatory for moored cruise ships from that moment on (judgment of 16 April 2025, ECLI:NL:RVS:2025:1726).

The judgment of 21 August 2024: ECLI:NL:RVS:2024:3416, concerns a woman who rents a seven-room house in Amsterdam. She has a permit for holiday rentals. When a municipal supervisor conducts a digital investigation into the house, he discovers that it is being offered for rent on Airbnb for six people. A month earlier, the house had been rented to five people. The Amsterdam municipal executive imposes a fine of € 11,600 on the woman: she has acted in violation of the conditions of her permit for holiday rentals. This states that she may rent the house to a maximum of four tourists. The AJD notes that the Amsterdam council imposes fines in accordance with a fine table in the Housing Ordinance. The fine regime should be proportionate, which was not the case in Amsterdam. In the case of violations causing nuisance for the environment, no distinction is made in the extent of the violation, such as the number of nights by which the holiday rental has been exceeded or the number of people staying there. This means that the fine table in the Amsterdam Housing Ordinance is in conflict with the GALA and is therefore non-binding. The Amsterdam city council must establish a fine regime for holiday rentals that does justice to the principle of proportionality: with more differentiation. Still the woman has committed an offence. The AJD therefore determines the amount of the fine itself. It considers € 2,900 appropriate.

II.B. According to legal practice, what is currently the main channel through which the relevant disputes are brought before the courts?

-litigations concerning control of the legality of administrative acts or omissions? ☐X

-litigations concerning compensation for damage caused by acts or omissions of the administration? ☐

-other categories of litigations? ☐

II.C. Please cite any court decisions:

-that have expressly recognised the obligation of the State and/or other public entities to take positive measures in order to address the phenomenon of 'hypertourism'? ☐

-that have recognised a right of individuals to ensure compliance with this obligation? ☐

➥ Have case-law rules been formulated in this regard? If so, on what legal basis?

Not applicable

II.D. Do issues linked to overtourism:

-mainly concern the administrative courts, when they monitor the actions of the State and public entities,

or do they mainly concern the civil courts called upon to judge appeals against the actions of individuals?

administrative courts ☐X

civil courts ☐

both ☐

II.E. Can examples be found in your country's legislation and case-law that highlight the relationship between climate change and overtourism?

yes □X

no □

➥ If so, please present the main content of the relevant legislation or court decisions.

In a judgment of 26 February 2020, ECLI:NL:RVS:2020:579, the AJD ruled about special transport permits granted for vessels in the Amsterdam canals. The Transitional Arrangement stipulated that vessels of the legal commercial shipping existing on 1 April 2008 that do not comply with the new passage profiles can be granted a special transport permit for a maximum period of 15 years. The administrative authority argued that the need for the transitional provision ceased to exist when the municipal council determined in the Nota Varen 2013 that all tour boats would have to comply with stricter environmental standards, leading to zero emissions. The AJD ruled that he mere fact that the Nota Varen 2013 stipulated that all tour boats must comply with stricter environmental standards (ultimately zero emissions) does not affect the basis for the transitional provision. This concerns the possibility of continuing to sail with larger tour boats after 2023 than specified in the current passage profile.

In the aforementioned judgment of 16 April 2025, ECLI:NL:RVS:2025:1726, the AJD takes into account that cruise ships at the Wilhelminakade will be able to use shore power from mid-2025. As a result, the cruise ships no longer have to run their engines to produce electricity. It is also undisputed that a generator ban for cruise ships at the Wilhelminapier will be introduced in the short term and that shore power will be mandatory for moored cruise ships from that moment on. This aspect relates to air pollution, but is as well relevant from a climate point of view.

Co-funded by the European Union