

ClientEarth: Using the Law for the Public Good

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Agenda

- Introduction to ClientEarth
 - Who We Are
 - Lifecycle of the Law
 - What We Work On
- What is the “Public Good” in the context of Energy?
 - Energy Transition Programme: Tools & Objectives
 - Energy Transition Programme: Advocacy
 - Energy Transition Programme: Litigation
- Interventions Relevant to Energy

Introduction to ClientEarth: Who We Are

- ClientEarth is a global non-profit environmental law organisation
- We are headquartered in London, with offices in Brussels, Berlin, Warsaw and Beijing (and additional staff in Madrid and Luxembourg)
- We use law, science and policy to tackle key environmental challenges
- Our interdisciplinary teams include lawyers, scientists and policy experts



Introduction to ClientEarth: Lifecycle of the Law

(1) Drafting and proposing revisions to legal frameworks

(6) Bringing complaints before various EU, national and international tribunals

(5) Engaging with non-compliant companies or governments via formal or informal processes



(2) Consulting, providing evidence and advocating for legislation at EU and Member State levels

(3) Working on implementing legislation at Member State level or on relevant regulations

(4) Requesting and monitoring disclosures and risk management from governments and companies

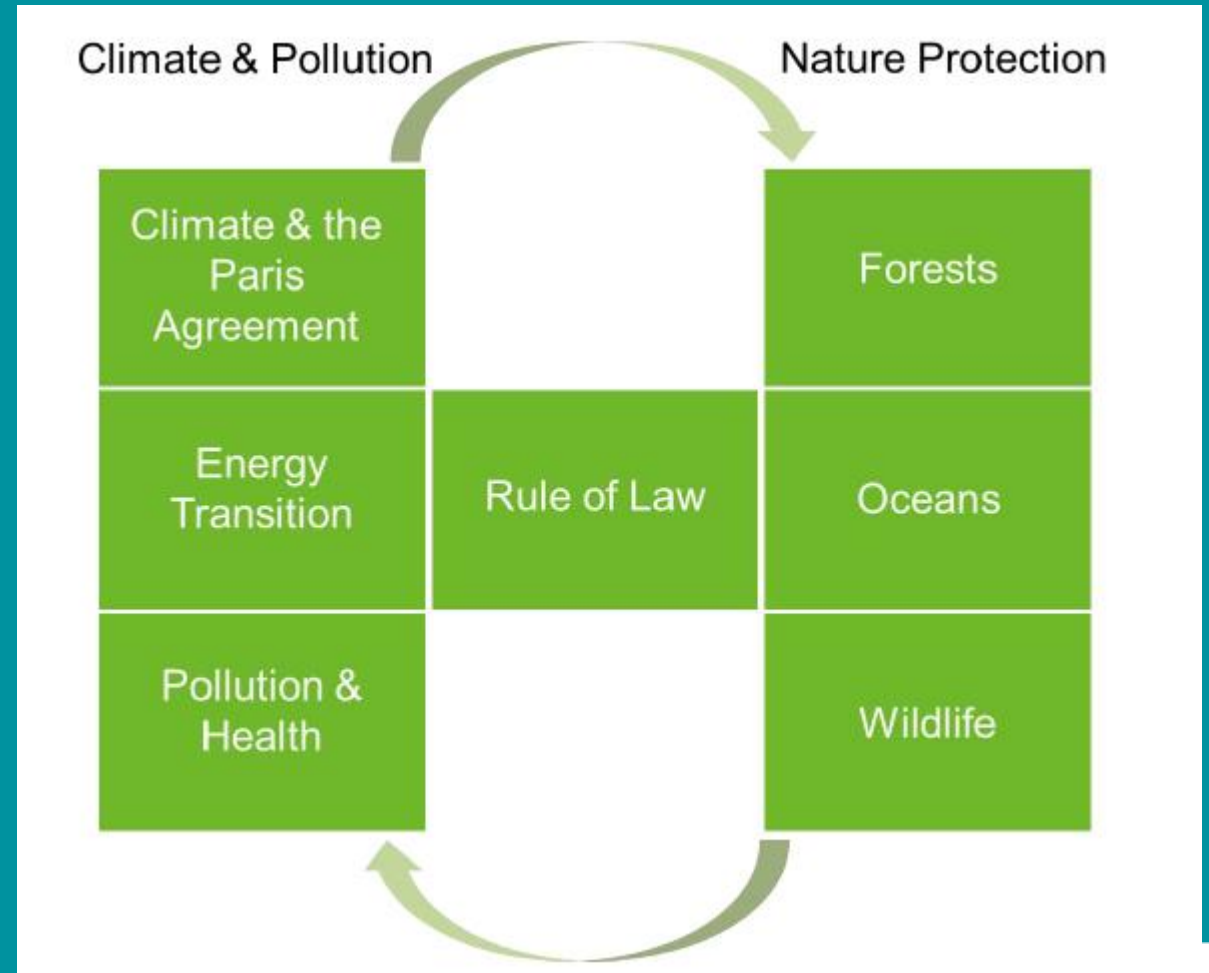
Introduction to ClientEarth: What We Work On

We shape, strengthen & enforce the law to:



Introduction to ClientEarth: What We Work On

- We work on climate change, the energy transition, human health & pollution, environmental democracy (Rule of Law), wildlife, oceans and forests



What is the “Public Good” in the context of Energy?



Energy Transition Programme: Tools & Objectives

- Aim to hasten the transition to an environmentally sustainable, efficient, flexible, clean and competitive energy system
- Drive integration of the European market and remove barriers to market entry for renewables, energy efficiency, demand response, storage providers and to the active participation of consumers
- Use energy markets, state aid, public finance and competition law

Energy Transition Programme: Advocacy

ClientEarth and its networks involvement in the development of the Clean Energy Package led to legislation that:

- Puts Efficiency First
- Values the consumer as an active participant in the energy market
- Recognises capacity mechanisms as a last resort, to be implemented only with proof of a resource adequacy problem (defined by the legislation)
- Provides that coal plants emitting more than 550 grams of CO₂/KwH cannot be granted aid through capacity mechanisms
- Places more, albeit not sufficient, emphases on the benefits of regionalisation

Energy Transition Programme: Litigation

- Coal permitting (+) litigation
- State aid complaints
- Market barrier litigation

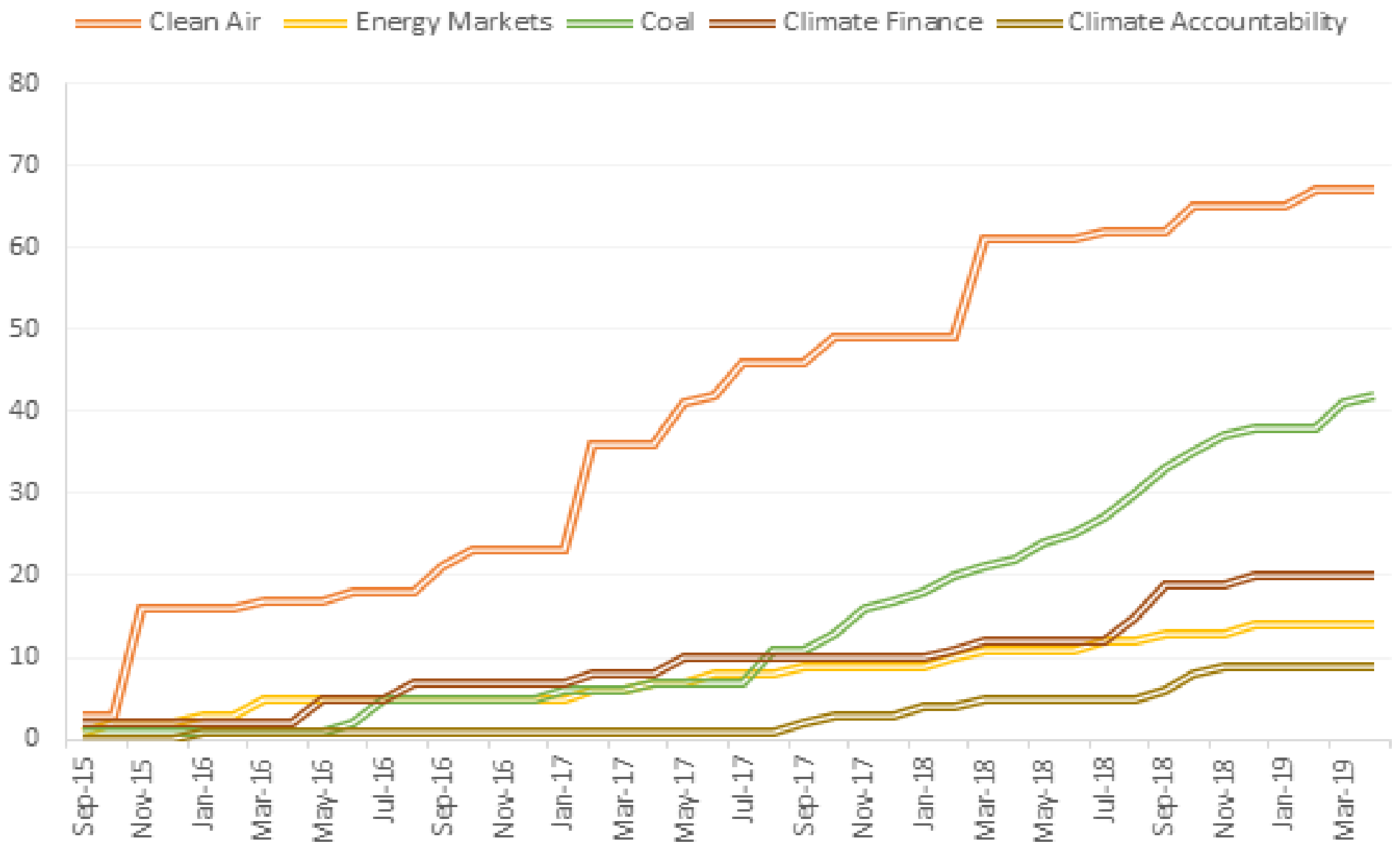
Energy-Related Legal Interventions



ClientEarth Legal Interventions

- A total of 162 legal interventions launched since January 2015 (Q2 2019)
- 103 currently pending interventions (90 at first instance + 13 under appeal) across 25 countries or international courts/decision-making bodies
- Currently scoping or preparing 92 further possible interventions
- 75% success rate (broad definition of success)

CASES LAUNCHED



ClientEarth Interventions: Regulatory Complaints

1. Cairn & SOCO (FRC) August 2016
2. BP & Glencore 'on risk' letters 2017
3. EasyJet, Balfour Beatty, Bodycote and EnQuest (FRC) September 2018
4. Admiral Plc

ClientEarth Interventions: ClientEarth v ENEA

- Ostroleka C – 1GW new coal plant in Poland
- Joint Venture between Polish state-controlled energy companies Enea and Energa
- CO2 price increase, competition from wind, solar
- ClientEarth purchased shares and voted against the Resolution - objection put on record
- Standing to bring an action revoking the Resolution under art 422 § 1 CCC



ClientEarth Interventions: ClientEarth v. EIB

- European first environmental challenge to EIB in January 2019
- Demanded internal review of EIB's decision in April 2018 to invest €60 million into a biomass plant in Galicia, Spain
- Loan breaches financing criteria for responsible investing and record shows numerous errors during assessment
- EIB refused to conduct an internal review, claiming it was not bound to do so
- Commission has recently intervened



Thank you

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