

# Development of EU Environmental Regulation

## 2.1 European Environmental Cooperation

### 2.1.1 The Origins

Today the European Union plays a major role in environmental legislation in its member states. Many even consider this a main reason for the existence of the Union: Environmental concerns do not stop at national borders and thus requires international cooperation. At its beginning in 1957 the original constellation of states were, however, not at all concerned with the environment. This was typical for the first post WWII years. The early awareness of environmental impacts was about neighbourhood problems, and focussed on health, or some local nuisance upsetting people. What went beyond this, the notion of “environmental problems” as a complex and inherent issue in our societies, was not developed until the 1960’s.

In the US the start is dated to 1962, the year Rachel Carsons published her pioneering book, *Silent Spring*, documenting the environmental damage caused by early agricultural chemicals. The late 60’s and early 70’s saw the first USA environmental legislation starting with the National Environmental Policy Act in 1969. The establishment of the Federal Environmental Protection Agency in 1970 belongs to the legacy of that book [Fraenkel, 1998]. In Europe environmental concerns were widespread and established by end of the 60’s [McCormick, 2001; Gouldson and Murphy, 1998]. Several countries organised their governmental administrations to work with environmental protection around 1970. The Swedish Environmental Protection Agency (EPA) and the corresponding unit at the governmental office have been working since 1969. Poland created its Ministry for Territorial Management and Environmental Protection in 1972. But in most European countries such reforms came later. In Germany for example the corresponding Ministry was not created until 1986.

### 2.1.2 The First Pieces of Legislation

The original European Economic Community (EEC) was deeply rooted in the post Second World War military-strategic situation in Europe. Its creation should be seen as an effort to reduce the risk of war caused by division of economic power and weapons production. The so-called Common Market was thus a peace project among its original six members Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands, all countries that had suffered from the

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war. French-German hostilities had caused the major European wars for more than two centuries.

The EEC thus did not have a mandate for environmental legislation, and the first pieces of legislation in the area had quite a different background and platform. The first legislation dealing with an environmental issue was a Euroatom directive from 1959 on protection of employees and the general public from radiation. The next actions were two directives on vehicle emissions and noise in 1970 and in 1972. The Union was at that time focusing on the creation of a larger common market, and the reason behind these first two pieces of legislation was efforts to prevent Germany and France from making a tougher regulation of their own, which might have created problems for Italian and Dutch car producers.

The tricky matter for EU in these early years of environmental regulation was the lack of any formal authorization in the Treaty of Rome for the EC/EU to act on environmental issues. Environmental regulation in the EU was then often referring to the “sweep all”- clause in the Rome Treaty, Article 235. Another reference was to Article 100, which gave the Council the right to issue directives to bring contradicting legislation in member states in line. Already then, therefore, the reasoning was, that environmental regulation could be used as a “hidden” protection against competition and therefore a barrier to free trade in the European market. The European Court supported the right for the Council of Ministers to use Article 100 as the base for harmonizing environmental law in the interest of the common market. Article 100 in the Rome

### Box 2.1 Principles of EU Environmental Regulation

The European Union Treaty adopted in Nice (article 174 EC) has listed the basic principles of EC legislation. They are summarised here and further discussed in the chapters.

#### **The Principle of Prevention:**

“The best environment policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects. To this end, technical progress must be conceived and devised so as to take into account the concern for protection of the environment and for the improvement of the quality of life, at the lowest cost to the Community. This environment policy can and must go hand in hand with economic and social development, and also with technical progress.” (2<sup>nd</sup> EAP, but already mentioned in the 1<sup>st</sup> EA)

#### **The Principle of Early Consideration of Possible Environmental impacts:**

“The effects on the environment of all the technical planning and decision-making processes should be taken into account at the earliest possible stage. The environment cannot be considered as an external medium which harasses and assails man; it must rather be considered as an essential factor in the organization and promotion of human progress. It is therefore necessary to evaluate the effects on the quality of life and on the natural environment of any measure that is adopted or contemplated at national or Community level and is liable to affect these factors.” (2<sup>nd</sup> EAP, but expressed already in the 1<sup>st</sup> EAP. This principle later developed into the Environmental Impact Assessment, EIA, Directive))

#### **The Polluter Pays Principle:**

“The cost of preventing and eliminating nuisances must, as a matter of principle, be borne by the polluter. Howev-

er, there may be certain exceptions and special arrangements, in particular for transitional periods, provided that they cause no significant distortion to international trade and investment. Without prejudice to the application of the provisions of the Treaties, this principle should be stated explicitly and the arrangements for its application, including the exceptions thereto, should be defined at Community level. Where exceptions are granted, the need for the progressive elimination of regional imbalances in the Community should also be taken into account.” (2<sup>nd</sup> EAP, already mentioned in the 1<sup>st</sup> EAP)

#### **The Subsidiarity Principle**

“In each category of pollution, it is necessary to establish the level of action (local, regional, national, Community, international) best suited to the type of pollution and to the geographical zone to be protected. Actions likely to be most effective at community level should be concentrated at that level; priorities should be determined with special care.” (2<sup>nd</sup> EAP, already mentioned in the 1<sup>st</sup> EAP, Title II)

#### **The Subsidiarity and Proportionality Principles**

“The subsidiarity principle is intended to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at Community level is justified in the light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality and necessity, which require that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaty. (Article 5 in the EU Treaty – referred to in EUROPA 2004)

Treaty thus remained as the platform for environmental legislation up to 1981.

### 2.1.3 The Paris Declaration

In the wake of the 1972 UN-Stockholm Conference on the Human Environment, the European Community Summit in Paris in October 1972, also including the three coming new member states, Denmark, Ireland and the UK, agreed on a statement which took cooperation between the member states beyond the economic and political spheres. It said:

*“Economic expansion should be accompanied by environmental protection so as to achieve a genuine improvement of the quality of life.”*

This statement recognises that the main aim of the EC – economic development – was not an end in itself and that the protection of the environment should be given more attention. The Commission was therefore asked to develop an environmental policy for the Community. In practical terms, the decision led to the establishment of a minor unit within the

#### Box 2.2 The First Environmental Action Programme, 1973-1976

##### Objectives:

- Prevent, reduce and as far as possible eliminate pollution and nuisances.
- Maintain a satisfactory ecological balance and ensure the protection of the biosphere.
- Ensure the sound management of and avoid any exploitation of resources or of nature which cause significant damage to the ecological balance.
- Guide development in accordance with quality requirements, especially by improving working conditions and the settings of life.
- Ensure that more account is taken of environmental aspects in town planning and land use.
- Seek common solutions to environmental problems with States outside the Community, particularly in international organizations.

##### Three categories of action:

- Action to reduce and prevent pollution and nuisances.
- Action to improve the environment and setting of life.
- Community action or, where applicable, common action by the Member States, in international organizations dealing with the environment.

Source: Council of the European Communities, 1973.

Commissions DG III to work on environmental issues, a Committee on the Environment in the European Parliament and a decision to ask the Commission to draft an EC Environmental Action Programme (EAP) [McCormick, 2001].

The Paris declaration thus constitutes the birth of a European-wide environmental policy.

### 2.1.4 The First Environmental Action Programmes

This first EC-EAP was ready and endorsed in November 1973 and the second EAP drawn up and adopted in 1977.

The problems with the Treaty’s legal authorization to actually turn the EAP into legislation persisted. A number of principles, still central to EU environmental policy, were reformulated from the first EAP and made more precise and operable, a version which has been standing ever since. Among these were the principle of early consideration of possible environmental impact to make prevention easier (a forerunner for the Environmental Impact Assessment, EIA, directive), the Polluter Pays Principle, Joint action by the EC-countries on the international scene, and application of the subsidiarity principle in applying pollution control.

Some of these principles were applied in the first directives, which were created in the period under the second EAP. Thus directives were issued on water quality, air quality (directive on limits to SO<sub>2</sub> and particulates, as well as a directive on lead concentration in the air), waste handling, labelling and packaging of dangerous substances, as well as regulating discharge of dangerous substances into surface waters.

### 2.1.5 A Formal Base for European Environmental Legislation

The first signs of change to a proper formal base for environmental legislation were seen in the early 1980’s. The first step came with some institutional changes within the European Commission in connection with Greece taking up EU-membership in 1981. On that occasion, the previous “environmental unit” got the status of a Directorate General in its own right, named DG XI and covering “Environment, Nuclear Safety and Civil Protection”.

Next step took place at the level of the EU-Treaty. The change of the treaty in 1986, *the Single European Act*, taking effect on 1<sup>st</sup> July 1987, gave the environment its “own” chapter in the Treaty, placed as Article 130R-T. This laid down the Community competence “to preserve, protect and improve the quality of the environment” as long it could be done better on the community level than on the level of member states (the so-called subsidiarity principle).

The 4<sup>th</sup> EAP was adopted in 1987 after the Single European Act with the *Chapter on the Environment* was agreed

upon. Now the Community institutions, the Council, the Commission and the Parliament for the first time had a specific and direct legal authority to act. This gave the Commission, which has the power to propose new EU-legislation, a clear and strong base for environmental policy-making, which it had lacked so far. Finally, from 1989 the DG XI had a portfolio, only on *Environment*, while until then, the portfolio also had included *Transport*.

### Box 2.3 Important Dates in European Union History

1957	Belgium, (West) Germany, France, Italy, Luxembourg, the Netherlands of the European Coal and Steel Community decide to form an economic community (EU-6).
1957	Adoption of the Treaty of Rome; the European Economic Community, EEC, is formed.
1972	Declaration of Paris including the importance of environmental protection.
1973	Entry of Denmark, Ireland and the UK (EU-9).
1973	First EC-Environmental Action Programme (EAP).
1981	Directorate General of Environment, DG XI, formed.
1981	Entry of Greece (EU-10).
1986	Entry of Spain and Portugal (EU-12).
1987	Single European Market Treaty adopted.
1989	The fall of the Berlin Wall
1990	German Unification, Unified Germany in the Union.
1992	Single European Market into force.
1993	Maastricht treaty into force; this establishes the European Union.
1993	The Fifth EAP – Towards Sustainability
1995	Entry of Austria, Finland and Sweden (EU-15).
1997	Amsterdam treaty adopted.
1999	The European Single Monetary policy begins and the Euro is introduced.
2000	The Lisbon agenda for modernising the European economy is adopted.
2001	Adoption of the Treaty of Nice.
2001	A EU Strategy on Sustainable Development.
2001	The Sixth EAP – Our Future, Our Choice
2004	Entry of Estonia, Latvia, Lithuania, Poland, Slovakia, Czech Republic, Hungary, Slovenia, Cyprus, Malta (EU-25).
2005	Carbon Emission Trading Scheme starts
2007	Entry of Romania and Bulgaria (EU-27)
2007	The REACH Regulation implemented

See further: *The history of the European Union*  
[http://europa.eu/abc/history/index\\_en.htm](http://europa.eu/abc/history/index_en.htm)

With these measures the platform for a common environmental policy and regulation had been created. In 1990 the European Environment Agency was established and, finally, placed in Copenhagen. The main purpose of the agency was to provide the Commission with systematic and reliable information on the European environment as a base for the Commission's policy making and prioritizing.

## 2.2 The European Union Environmental Policies

### 2.2.1 The Third and Fourth Environmental Action Programmes

The third EAP was adopted in 1983 and in this period the character of the regulation decided on started to show a more preventative and source-oriented approach. A more distinct feature was the notion of the need to make environmental concerns an integral part of all European Community policies. Lack of proper control in 1982 of hazardous waste from the Seveso-accident some years earlier made control of member state implementation a priority.

A directive of major importance from this period – and still in force as amended in 1997 – is the EIA-Directive, Directive 85/337/EEC of 27<sup>th</sup> June 1985. It is aimed at securing a comprehensive and holistic assessment of the likely or possible impact on the environment of major public and private projects as a precondition for authority acceptance of the project. A key element in the directive is the involvement of the general public by mandatory public hearing procedures prior to decision-making.

### 2.2.2 The Single Market

The changes in the 1987 treaty on the Single European Market were, of course, mostly concerned with the provisions needed for establishing the single market for goods, service, capital and people. The major new element to that end was the introduction of the Qualified Majority Voting (QMV), included in Article 100 A (now Article 95), to be used on all issues, related to making the single market work. This had major influence also on the environmental policy making in EU. Article 100 A in section 3 stated that all Commission proposals on measures to further the internal market related should be based upon a "high level of protection" of health, safety, environment and the consumer. It meant a high degree of integration of environmental concerns into all important policy areas. The QMV-system was introduced into environmental policy with the Environmental Chapter of the Treaty only with the Maastricht Treaty of 1992.

The purpose of the Single Market project and the use of Article 100 A was to promote trade, competition and economic growth within the EU. This raised mixed feelings on the side

of environmentalists. A clash between environmental concerns and trade promotion was inevitable on many occasions. The trade and economic perspective prevailed as the single market was top-priority these years. Although the problem and the contradictions in many cases were not solved, Section 3 of Article 100 A was still an important element in this process of substantial policy development within the EU. It combined the integration principle with a demand for a high level of environmental protection.

The relative success on the side of the environment of this concept is indicated by the fact, that the “opt-out clause”, established in Article 100 A, section 4 never played any major role and today is hardly referred to. The clause made it possible for a country to “opt out” of a piece of policy-making related to the internal market, with environmental policy implications. If the country cannot accept the EU regulation due to higher environmental standards in that country in this particular area they can refuse. The key requisite to use the

clause is the provision of scientific evidence, supporting the national policy. It has become clear over the years that the EU, compared to the national level, actually is an environmentally “progressive” forum for policy making. The integration in the Union has gone very far due to the internal market. This makes separate, more environmentally advanced or progressive policies in one or two countries difficult, as trade organisations will point to loss of competitive strength.

In an introductory note, the Commission presents the new (4th) EAP with the following reflections:

*“It is no longer seriously contested that environmental protection policy has a central part to play in the whole corpus of Community policies and that environmental protection needs to be taken into account as a fundamental factor when economic decisions are taken. Continuing – and in many cases growing – problems of environmental deterioration have convinced the Commission that the establishment of strict standards for environmental protection is no longer merely*

## Box 2.4 The Third Environmental Action Programme, 1982-1986

### Objectives:

Integration of the environmental dimension into other policies.

### Environmental impact assessment procedure

Reduction of pollution and nuisance if possible at source, in the context of an approach to prevent the transfer of pollution from one part of the environment to another.

### Combating atmospheric pollution

Reduction of NO<sub>x</sub>, heavy metals and SO<sub>2</sub> inter alia by implementing council directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates (5)

### Combating fresh-water and marine pollution

Implementing council directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the community (6) and council directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (7).

The action programme of the European Communities of 26 June 1978 on the control and reduction of pollution caused by hydrocarbons discharged at sea (8).

### Combating pollution of the soil

Environmental protection in the Mediterranean region, paying particular attention to the specific aspects of that region when giving practical application to the action programme.

### Combating Noise pollution

Reduction of noise pollution caused by means of transport.

### Combating transfrontier pollution

Dangerous chemical substances and preparations; e.g. the supplementing and application of council directive 79/831/EEC of 18 September 1979 amending for the sixth time directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (9).

### Waste management

including treatment, recycling and re-use and in particular toxic and dangerous waste, including transfrontier transport of such waste and the review of the list of toxic or dangerous substances and materials in the annex to council directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (10).

### Clean technology

Encouraging the development of clean technology, e.g. by improving the exchange of information between member states.

### Others

Protection of areas of importance to the community which are particularly sensitive environmentally.

Cooperation with developing countries on environmental matters.

Action specific to certain industrial sectors and to energy production.

Source: EurLex, Official Journal C 46, 17/02/1983.



## Box 2.5 The European Union Institutions and EU Environmental Policy

The *institutional structure* of the Union has developed over its entire history, but four institutions have been and are fundamental. These are the European Council, the European Commission, the European Parliament and the Court of Justice. The division of power between these is important for the function of the Union. It has, however, changed considerably over the years. The EU or EEC institutions should not be confused with other European institutions. Of special importance is the Council of Europe, which was formed in 1949 by ten original member states. It has been a forum for political debate and most importantly protection of human rights.

### The EU headquarter in Brussels

The *headquarters* of the Union has since its origin been placed in Brussels. This is quite symbolic for a union whose original task was to bridge the Germanic and Roman cultures of Europe. Brussels is bilingual, and half of its population speaks French and the other half Flemish, a fact which has caused many conflicts over the years. An exception is the location of the European Parliament which is divided and the meetings take place partly in Brussels and partly in Strasbourg.

### The European Council

The *European Council* is the meeting of the acting and elected heads of government. In most countries this is the Prime Minister, but in France, the constitution makes the President the acting head of government. European Council meetings take place once in each six months period with extra meetings called in between when need may be. These meetings are hosted by the country chairing the council, that is, the member state having the *presidency* of the Union.

The highest, formal decision making body of the Union is *The Council of Ministers*. The so-called general council consists of the ministers of foreign affairs of the members states. All the other ministers, including the ministers of environment, have their own council meetings to discuss and decide on matters in their field of competence.

### The Union and its member states

The division of power between the Union and its member states is crucial, and has been debated all along. In practice it is not possible to overrule a member state in important issues. In the 1970's the Council took a decision to this effect, which has continued to be valid. After the enlargement of the Union in the 1990's, unanimity in all issues has not been realistic any longer and the "veto" of individual members is limited to issues of crucial importance to the members. In addition there is a principle of not regulating an issue on the Union level if it is better to do so on the national level. This principle of *subsidiarity* has been practiced since the 1980's.

The *Qualified Majority Voting* system in case of disagreement meant overruling one or more countries within the single market clause. Therefore an "escape" or "opt-out" clause was established for environmental issues within the single market decision-making area. This was used if a country had e.g. a special regulation on use of a certain chemical and that national regulation now was conflicting with a new piece of EU-regulation. Then that state could maintain its regulation, if the Commission could endorse, that the regulation was considered not to be "hidden" restrictions on the "free movement of goods" within the EU. Use of this clause is therefore very restricted and never had any real influence, as member states were very reluctant to test the limits.

The clause is still there but no longer has the same political position, as the QMVoting since 1992 has applied also to environmental policy decisions in the EU.

### The Commission

The European Commission is the executive office of the Union. It is run by a President, who presently is the former Portuguese Prime Minister José Manuel Barroso, and the commissioners. From 2004 the Commission has been made up by one commissioner from each member state.

The Commission is assisted by a civil service made up of 17 *Directorates General* (DGs), one for each specific policy area, and 21 *services* (for such issues as budget, translations etc), These are mainly based in Brussels and Luxembourg. The DGs together have several thousand employees.

### The DG Environment, DG XI

The DG Environment is based in Brussels and has around 550 employees. The Commissioner for the DG Environment is Stavros Dimas from Greece. The organisation of the DG consists of – in addition to the office for the Director-General – the following seven offices, called directorates:

- Directorate A: Communication, Legal Affairs & Civil Protection.
- Directorate B: Protecting the Natural Environment.
- Directorate C: Climate Change & Air.
- Directorate D: Water, Chemicals & Cohesion.
- Directorate E: International affairs & LIFE.
- Directorate F: Resources.
- Directorate G: Sustainable Development & Integration.

DG Environment has, as the other DGs, a detailed homepage where updated information can be found. See: <http://ec.europa.eu/dgs/environment/directory.htm>

### The European Parliament

The *European Parliament* is elected by the inhabitants of the member states in direct elections each five years. Today there are 785 members of parliament representing



**Figure 2.1 European Parliament.** *First session in Strasbourg.* (Credit © European Community, 2007)

492 million citizens in the 27 member states (in 2007). The election to the parliament takes place every five years. The last election was run in 2004 and the next will be 2009.

The European Parliament has since the dramatic changes in 1999 in the Commission strengthened its status and has the right to review, and has to accept, the legislation of the Union. Its influence thus is important in the field of Environment. It is also taking initiatives to new legislation.

The members of the European Parliament, MEPs, organise themselves in groups according to traditional political divides. The groups are e.g. the European People's Party (Christian Democrats), which presently is the largest group, the Socialist Group, presently the next largest group, the Alliance of Liberals and Democrats for Europe, and so on.

#### **The European Court**

The European Court of Justice, ECJ, judges on matters of interpretation of European Union law. ECJ consists of 27 Judges and 8 Advocates General. Most common cases are the Commission's claims that member state has not implemented a EU Directives, and member states' claims that the Commission has exceeded its authority. During 2005, ECJ treated 798 cases on environmental law. A 2007 example is when the Commission took Poland to court over a road construction in a nature-protected area in Augustow in North-east Poland.

#### **European Union agencies**

The European Union has a number of institutions for various technical and other purposes. A Community *Agency* is a body governed by European public law set up by an act of secondary legislation. The present 28 EU agencies were set up to accomplish very specific technical, scientific or managerial tasks, such as to promote environmen-

tal protection, transport safety and multilingualism. They span Europe – Dublin to Stockholm, Warsaw to Lisbon – providing services, information and know-how to the general public. With more than 2,500 staff and significant budgetary resources, the agencies and their activities have become central to the operations of the EU and play a key role in the implementation of its policies.

The *European Environment Agency* is the EU body dedicated to providing sound, independent information on the environment. It is the main information source for those involved in developing, adopting, implementing and evaluating environmental policy, and also the general public. It is located in Copenhagen. The EEA provide information and assessments of the state of the environment and trends in it, together with pressures on the environment and the economic and social driving forces behind them. It also covers policies and their effectiveness and possible future trends and problems using scenarios and other techniques (from the EEA website).

To collect information the EEA has created the European environment information and observation network (Eionet). The Eionet works in close cooperation with national environment agencies, environment ministries or corresponding institutions in the member countries. It is responsible for coordinating national networks involving about 300 institutions in all. To support data collection, management and analysis EEA has in addition established and work closely with five European topic centres covering water, air and climate change, nature protection and biodiversity, waste and material flows, and terrestrial environment.

#### **The European research institutions**

European Union legislation is developed using a considerable arsenal of research. Some of this is published data but the Union also has its own organizations. The Commission's Directorate-General for Research has established a *Joint Research Centre* (JRC) to support EU policy makers in the conception, development, implementation and monitoring of policies to tackle trans-national and global problems.

The JRC has seven different institutes in five separate sites in Belgium, Germany, Italy, the Netherlands and Spain: Especially relevant for environmental legislation is the Institute for Environment and Sustainability, in Ispra Italy, the Institute for Energy (IE), and the Institute for Prospective Technological Studies (IPTS) both in Seville, Spain. The main centre is in Ispra in north Italy.

The *European IPPC Bureau*, housed in Seville, has the task to catalyse an exchange of technical information on best available techniques under the IPPC Directive 96/61/EC. This information is used to create reference documents (BREFs). These must be taken into account when the competent authorities of Member States determine conditions for IPPC permits.

*an option; it has become essential. Moreover, the Commission is also convinced that, when account is taken of the growing public demand for improved standards of environmental protection and for environmentally friendly goods – both within the Community and worldwide – Community industry will not be successful unless it increasingly gears itself towards the meeting of such standards and the production of such goods. High standards of environmental protection have thus become an imperative – and an economic imperative at that.” [Official Journal C 328, 07/12/1987 / P. 01-44]*

### 2.2.3 Towards Sustainability – the Fifth EAP

The title of the 5<sup>th</sup> EAP, taking effect on the 1<sup>st</sup> of February 1993, shows yet another shift in the political context and the agenda, set for the environmental policy making. The single most influential factor is the publication in 1987 of the Brundtland Report *Our Common Future*, which was initiated to form the background for the planned 1992 Earth Summit in Rio de Janeiro, Brazil. That summit was planned as the 3<sup>rd</sup> Summit on the Environment, held every 10 years with the first being held

in Stockholm in 1972. There was an extensive planning process prior to the Rio Summit and the results were by far the most concrete and far reaching yet on the Environmental and nature resource issues. The key concept, stemming from the Brundtland Report and prevailing across all discussions were the notion of “Sustainability/Sustainable Development”.

The relation of the 5<sup>th</sup> EAP to the Rio Summit is clearly stated:

*“The fifth environmental action programme was produced as the Community’s main response to the 1992 Rio Earth Summit which called on the international community to develop new policies as outlined in Agenda 21, to take our society towards a sustainable pattern of development. The programme was to start this process within the Community, identifying objectives which required action at Community, national and local levels. Central to the programme was the recognition that environmental legislation in itself is not sufficient to improve the environment. Developments in areas that create environmental pressures, such as transport, energy or agriculture often outweigh the benefits of new regulations. Economic activities therefore*

#### Box 2.6 The Fourth Environmental Action Programme, 1987-1992

With the 4th EAP the political context changed, to the Treaty of Rome. This changed EU Environmental Policy fundamentally. From the 4th EAP we quote:

##### **The Council of the European Communities**

*recalls* that the Single European Act lays down that:

- action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay,
- environmental protection requirements shall be a component of the Community’s other policies,
- within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the relevant international organizations;

Whereas it is necessary, in accordance with the Treaty as amended by the Single European Act, to avoid the adoption by the Member States of divergent measures likely to bring about economic and competition distortions in the common market;

*recalls*, finally, that:

- the Commission, in its proposals on health and environmental protection, takes as a basis a high level of protection as laid down in the relevant provisions of the Single European Act;

*recognizes* that:

- the protection of the environment can help to improve economic growth and facilitate job creation;

*welcomes*

- the Commission’s intention of working closely with industry, trade unions and interested non-governmental organizations in the drawing-up and implementation of environmental policy and programmes;

*underlines*

- the particular importance it attaches to the implementation of the Community legislation and

*invites*

- the Commission to review systematically the application and the practical effects of existing Community policy and to provide regular reports on this to the Council and the European Parliament so that an assessment of the effectiveness of such a policy can be made and, inter alia, useful guidelines for future proposals determined;

*declares*

- that, in view of the foregoing, and on the basis of past achievements, it is important for Community action to concentrate on the following priority areas while observing the respective powers of the Community and the Member States (a list of areas follows).

*Source: European Union, (1987)*



have to take better account of environmental objectives in addition to a strengthening of environmental policy. This requires commitment by societal stakeholders and citizens as well as by the Member States and regional and local authorities. A broader range of instruments should provide information, incentives and support with a view to influencing decisions which affect the environment. In order to focus action, the fifth programme identified a number of environmental priority themes and objectives up to the year 2000, and pointed to five key sectors with an important impact on the environment and to which particular attention should be given in terms of integrating environmental concerns.” [Global Assessment, Preface, p. 7]

### 2.2.4 Assessing the Fifth EAP

A number of very important directives were decided upon during the period of the 5<sup>th</sup> EAP. In the context of this book first of all the IPPC-directive should be mentioned (Council Directive 96/61), together with the Council Regulation no. 1836/1993 on the EU-EMAS Scheme, amended and updated by Council and Parliament Regulation no. 761/2001 and with the Eco-labelling, Council Regulation no. 880/1992, amended and substantially updated by Council and Parliament Regulation no. 1980/2000.

The 5<sup>th</sup> EAP was put up for a thorough review by Parliament and Council decision in 1998, reiterating the approach and strategies used so far but underlining the need for more efforts put into the implementation of current regulation. The review should include a global assessment of the 5<sup>th</sup> EAP as a whole and use the opportunity to put forward proposals and ideas for policy objectives and priorities, relevant to meet the challenges in the – then – upcoming new millennium. In reality this part of the obligation meant a first input to a new, 6<sup>th</sup> EAP. The review with the global assessment of the 5<sup>th</sup> EAP *Towards Sustainability* was published in 2000 and the proposal for the 6<sup>th</sup> EAP in 2001.

The global assessment concludes, that the results have been visible and recognizable, e.g. in areas like reduction of trans-boundary air pollution, better water quality and phase-out of ozone depleting substances. At the same time there is still a lot of concern for the overall situation for the state of the environment and with pressures on the environment expected to grow even further in some areas in the years to come (EEA, State of the Environment Report), despite progress in some sectors like Industrial production:

*“Less progress has been made overall in changing economic and societal trends which are harmful to the environment. The commitment by other sectors and by Member States to the programme is partial, and the patterns of production and consumption in our countries prevent us from achieving a clean and safe*

*environment and protecting the world’s natural resources. The outlook is that new environmental standards will not keep pace with the growing demand, for example, for transport, consumer goods or tourism. The perspectives are particularly bleak for climate change if trends in the main energy-consuming sectors cannot be reversed. At the same time, it is increasingly clear that damages to the environment have costs to society as a whole, and conversely that environmental action can generate benefits in the form of economic growth employment and competitiveness.”* [Global Assessment, p. 7, EU, Luxembourg 2000]

### Box 2.7 The Fifth Environmental Action Programme, 1993-2000, Towards Sustainability

The objective of the 5<sup>th</sup> EAP is to set forward suggestions on solutions or prevention of environmental problems in the following areas:

- Climate change.
- Nature and biodiversity.
- Acidification and air quality.
- Urban environment.
- Coastal zones.
- Waste management.
- Management of water resources.

The programme furthermore outlines 5 especially important sectors in which action should be taken to deal with environmental issues in the above-mentioned areas:

- Industry.
- Energy sector.
- Transport.
- Agriculture.
- Tourism.

The suggested policy instruments in the programme could be subdivided into 7 overall instruments:

- Improvement of environmental data.
- Scientific research and technological development.
- Sectoral and spatial planning.
- The economic approach: Getting the prices right.
- Public information and education.
- Professional education and training.
- Financial support mechanisms.

The programme stresses that solutions can only be reached through a holistic approach, with the usage of several instruments, a combination of traditional regulatory instruments and market-based instruments.

Sources: European Commission 2003b; European Commission 2003c.

### 2.2.5 The Sixth EAP, 2002-2010

The lesson from the 5th EAP is first of all the need to see environmental policy in the wider context of environmental, social and economic objectives. They must be pursued in a coordinated and mutually compatible way. Only a holistic and comprehensive approach can realistically reach out for sustainable development. These will finally imply fundamental societal and economic changes, which cannot be brought about along the lines and within the trends pursued so far.

This is where the dichotomy between economic growth and accompanying increased material consumption, and sustainability surfaces again. Human or anthropogenic activity need to stay within the carrying capacity of nature at large, maintaining bio-diversity and avoiding depletion of crucial

#### Box 2.8 The Sixth Environmental Action Programme – Our future, our choice

According to the 6th EAP, environmental improvements are mainly needed in four areas:

- Climate change.
- Nature and biodiversity.
- Health and quality of life.
- National resources and waste.

To reach a solution or a minimisation of the environmental problems the European governments are facing, in the above mentioned areas, the programme outlines seven strategies for environmental improvement:

- Clean Air for Europe.
- Soil protection.
- Sustainable use of pesticides.
- Protection and conservation of the marine environment.
- Waste prevention and recycling.
- Sustainable use of natural resources.
- Urban environment.

The programme underlines that environmental problems should be dealt with in a holistic approach, with the focus on cooperation between government, industry and other stakeholders. A holistic approach is necessary, due to the number of stakeholders and the complexity of environmental issues. Continued efforts of integrating environmental concerns into regulation of the economic sectors and the effective application of the “polluter pays” principle and full internalization of environmental costs onto polluters are closely inter-linked and remain key priorities.

Source: European Commission, 2003a.

natural resources. The difficulty is, that demands for changes to make this possible unavoidably become in essence political. Still, short of sustainable development, much improvement in the protection of the environment have been achieved by means of the policy and the regulation based on that.

This holistic or integrated approach to the environmental problems was further developed in the 6th EAP (Box 2.8). According to the 6th EAP, environmental improvements are mainly needed in four areas:

- Climate change.
- Nature and biodiversity.
- Health and quality of life.
- National resources and waste.

In all these areas forceful legislation has developed since it was adopted in 2003. The climate change is pursued through the implementation of the Kyoto protocol, and emission trading introduced in 2005, Concern for biodiversity through the development of the Natura 2000 programme, Health aspects through the REACH Regulation implemented adopted in December 2006 after a long period of negotiation, and Resource and waste management through a series of measures to make the Union a recycling society, especially by improved waste management.

### 2.2.6 The Lisbon Agenda and the Strategy on Sustainable Development

The development of environmental protection has, however, in the first years of the 21<sup>st</sup> century, been competing with other policies. Foremost of these is the Lisbon Agenda. In March 2000, EU leaders in Lisbon adopted a ten-year programme aimed at revitalising growth and sustainable development across the Union. The Union “set itself a new strategic goal for the next decade to become the most competitive and dynamic

#### The EU Environmental Action Programmes

First Environmental Action Programme 1973-1976

Second Environmental Action Programme 1977-1981

Third Environmental Action Programme 1982-1986

Fourth Environmental Action Programme 1987-1992

Fifth Environmental Action Programme 1993-2000  
*Towards Sustainability*

Sixth Environmental Action Programme 2001-2010  
*Our Future, Our Choice*



**Figure 2.2** European Commission. *Meeting of the 27 Commissioners.* (Credit © European Community, 2007)

knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.”

The Lisbon agenda had four parts: economic, social, environmental renewal and sustainability. In reality the economic development dimension of the Lisbon Agenda definitely has got the upper hand. In face of a weak economic development in the old EU European Commission President José Manuel Barroso announced in February 2005 a relaunch of the Lisbon Strategy as a “Partnership for Growth and Jobs”, simplifying targets and reporting procedures, and with a single National Reform Programme (NRP) for each country.

Many warned that the targets on social policy and the environment were taking a back seat, in the push to make Europe more business-friendly.

In parallel the Commission worked out a strategy to support the Sustainable Development goal. This was launched in May 2001 in Gothenburg, Sweden, as “A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development”. The strategy identifies six unsustainable trends on which action needs to be taken, in many ways confirming the 6th EAP. The strategy lists a range of specific measures

at EU level to attain these objectives. These measures were updated and developed in the 2005 strategy review. They included measures

- To break the link between economic growth and use of resources.
- To halt the loss of biodiversity by 2010. The EU will have to promote sustainable production and consumption and ensure effective protection of biodiversity, particularly through Natura 2000.
- To break the link between economic growth and transport growth and do more to develop environmentally friendly transport. The share represented by road transport in 2010 should not be higher than in 1998. The strategy envisages, among other measures, infrastructure charging, and promotion of alternatives to road transport and less polluting vehicles.

The revised strategy also covered the combat of social exclusion and poverty and mitigate the effects of an ageing society, fight against world poverty, particularly by increasing the amount of aid provided to less favoured countries, improving the cohesion and quality of development aid policies and promoting better international governance.

## 2.3 EU Policies and the Surrounding World

### 2.3.1 EU and External Trade

The 1992 Maastricht treaty now had a separate chapter on the environment (chapter 7), but the single market establishment still had a substantial, although indirect, influence on environmental policy making in the EU. Technical standards and specifications as well as the definition of what is to be considered as goods and what is not, was decided upon under the umbrella of the single market to secure the harmonization of trade conditions for the largest possible amount of goods.

The priority was the single market, and therefore trade considerations would most often prevail over environmental considerations concerning a given type of products, if there was a clash between the two. However an additional interesting aspect is that requirements on material and goods sold in the Union are influenced by requirements established by the Union. This is most clear when a number of major companies in the Union have adopted the policy that providers should be environmentally certified.

The REACH Regulation, which will be implemented in 2007, will also lead to substantial consequences for trade partners outside the Union. All imported chemicals above a certain tonnage will have to be registered and assessed according to the Directive.

### 2.3.2 EU Policies

The policy comes from EU and takes effect first of all but not only within the EU-member states. The EU influences the whole European region and due to its size and strength also influences the global discussion and rule making on issues like climate change and protection of bio-diversity. The very successful EU environmental policy and legislation was at first seen as “pushing around” private business and other private interests, threatening European competitiveness and thereby economic viability of important companies and whole industrial sectors. Areas here are the IPPC and the EMAS regulation the environmental impact of industrial processes and sectors like automobiles, parts of chemicals (pesticides, biocides and ozone depleting substances), pharmaceuticals in animal production and food etc. Along this way much of this policy has been accepted and turned into economic benefits by improving internal company management of resources and waste.

The policy has also had technology implications. New areas of business have been opened up to serve and supply the technology and the products needed to achieve these aims. We have the so-called “win-win” situation for environmental regulation, paying back for the regulated entities. But that is not – and cannot be made the case – in all areas. There will also be

regulations not able to pay back for the regulated. Prevention as the main approach to reducing environmental impact is then not possible. The discharge-oriented regulation with “end-of-pipe” handling of resulting pollution is crucial in these cases and will also contribute to reducing costs.

### 2.3.3 EU in International Negotiations

The Union has developed in a world, which has become more and more interdependent on many issues including the protection of the environment. The global environmental issues have been mostly the domains of the United Nations. In relation to the UN the European Union has for quite some time taken a rather proactive role, pushing the development towards better regulated environmental matters and hopefully a better world. Important areas include international conventions, e.g. those on climate change, biodiversity protection, international waste trade, air pollution, etc. Thus the EU Birds Directive has its parallel in the Ramsar Convention. The directive on air pollution and the large power plants has its corresponding regulation in the the United Nations Economic Commission for Europe, UNECE, Convention on Long Range Transboundary Air Pollution, to which EU is a partner.

The European Union has in international negotiations been acting as one partner. In this way the Union has a considerable influence in global contexts. It has been especially clear in the Climate Convention and negotiations on implementation of the Kyoto Protocol.

### 2.3.4 The EU Enlargement to the East

In addition it should be mentioned, that implementation of – current and future – regulation into the regulation of the member states remains a high-priority area – and should be reinforced with more tough and effective follow up on member state compliance by the Commission. The accession of ten new member states in 2004, and two more in 2007 makes implementation a very important task anyway, as these countries have very substantial changes to make in the field of environmental protection. In addition the three countries of the European Economic Area (EEA) – Iceland, Liechtenstein and Norway – have agreed to implement almost all of the EU legislation.

The implementation of the European Union environmental policies in the new Member States in Central and Eastern Europe have, since 2004, been and still is a major task for the Union. It is supported by very substantial economic programmes. The most important are the structural funds, the LIFE programme and the so-called Norwegian Financial Mechanism – funding from the three EEA countries – together providing several hundred billion Euros for the period up to 2013.



## Study Questions

1. Give a short description of the origin of the European Union and describe the motives behind its formation 50 years ago.
2. Explain how the environmental issues entered the agenda of the Union. List a few key dates and policy initiatives.
3. List the most important principles behind environmental legislation in the Union.
4. Describe the policy behind the Single European Market, when it was implemented and its consequences for EU environmental legislation.
5. Describe the enlargement of the Union and give years for the accession of the countries in the Baltic Sea region. How many countries are today adopting EU legislation?
6. Explain the meaning of the connotation 85/337/EEC.
7. Explain how disagreements on environmental legislation are managed in the European Council, especially if or how unequal standards of environment are accepted. What is the QMV and when can it be used.
8. Make a diagram of the European Union institutions and how they related to each other in the field of environmental legislation.
9. Describe the changes and new features introduced in EU environmental policy and legislation in connection with the fifth EAP in the mid 1990s. Describe in particular the Framework Directives and Integrated Permits.
10. Describe the changes and new features introduced in EU environmental policy and legislation in connection with the sixth EAP at the turn of the century 2000. Describe in particular the four priority areas, and how they have been addressed, and the seven strategies for environmental improvements. (See also the Section on European Union Environmental Legislation at the end of the book).
11. Outline how the European Union has become a main partner in a number of global organisations and partner to several global environmental conventions. In what way are these implemented in the Union and its Member States? (See also the Section on European Union Environmental Legislation at the end of the book).

## Abbreviations

BREF	Best Available Techniques Reference Document
EAP	Environmental Action Programme
EC	European Community
EEA	European Environment Agency
EEC	European Economic Community
EIA	Environmental Impact Assessment
Eionet	European environment information and observation network
EMAS	Eco-Management and Audit Scheme
EMU	European Monetary Union
EPA	Environmental Protection Agency
DG	Directorate General
IE	Institute for Energy
IPPC	Integrated Pollution Prevention and Control
IPTS	Institute for Prospective Technological Studies
JRC	Joint Research Centre
MEP	Member of the European Parliament
QMV	Qualified Majority Voting
REACH	Registration, Evaluation and Authorisation of Chemicals
WWII	Second World War

## Internet Resources

European Union official web portal (English version, all EU languages available)

[http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)

The History of the European Union

[http://europa.eu/abc/history/index\\_en.htm](http://europa.eu/abc/history/index_en.htm)

Website of the European Parliament

<http://www.europarl.europa.eu/>

Website of the European Commission

[http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm)

Website of DG Environment

[http://ec.europa.eu/dgs/environment/index\\_en.htm](http://ec.europa.eu/dgs/environment/index_en.htm)

Activities of the European Union environment

[http://europa.eu/pol/env/index\\_en.htm](http://europa.eu/pol/env/index_en.htm)

Title XIX Chapters 174-176 of the European Treaty concerning Environment

[http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html#anArt175](http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html#anArt175)

EU legislation in force on environment

[http://eur-lex.europa.eu/en/repert/index\\_15.htm](http://eur-lex.europa.eu/en/repert/index_15.htm)

(See also an extensive collection of links in the Section of EU Environmental legislation)

Fifth Environmental Action Programme

<http://ec.europa.eu/environment/actionpr.htm>

Sixth Environment Action Programme

<http://ec.europa.eu/environment/newprg/index.htm>