

## EUROPEAN UNION

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### Summary

Since the 1980s, environmentalists have consistently argued for broad international action in the fight against environmental destruction, claiming that environmental issues cannot be contained or handled within national borders. Such issues, it is argued, can only be tackled through the harmonization of environmental attitudes and legislation and through the search for international solutions that extend beyond strictly national priorities and concerns. Given the need for collective action and legislation, the EU has become a prime focus as an initiator of such action. At the same time the EU has also had to confront claims that its actions have been a major contribution towards increasing environmental problems.

The evolution of environmental policy has been a relatively fragmented process, focusing predominantly around the development of Environmental Action Programmes. Since the mid to late 1980s, environmental policy has become more far reaching and has begun to tackle the issue of sustainability within the EU.

While the EU has clearly progressed significantly within the environmental policy field, its view of a sustainable society is largely based upon a pattern of ecological modernization rather than the vision of sustainable development advocated by environmental theorists, European green parties and environmental pressure groups. There is also a significant level of incoherence regarding the extent to which the concept of sustainability is effectively implemented within EU policy.

## 1. Introduction

Given the global nature of environmental problems, and the recognition that pollution knows no borders, there is a strong case to suggest that the challenge of sustainability can only be effectively confronted through the harmonization of environmental attitudes and legislation. To achieve this requires international solutions that extend beyond strictly national priorities and concerns. The need for collective action has subsequently led to the European Union (EU) becoming a primary focal point as a potential initiator for action within Europe.

As this article demonstrates, a brief glance at recent environmental policy development within the EU suggests that it has taken to its role as a potential environmental ‘guardian’ with increasing commitment and enthusiasm. At the Earth Summit in 1992, the European Community (EC) was the only non-governmental signatory. More recently, the introduction of the EU’s Fifth Environmental Action Plan (EAP) was initiated as a significant step in the transition towards a more sustainable pattern of development within Europe.

The growth in significance of the EU within the environmental sphere is also evident in the increasing role of Green actors at this level. In recent years the EU has represented an important focal point for the continued development of both environmental non-governmental organizations (NGOs) and European Green parties. Environmental movements have increasingly sought opportunities for consultation and have devoted significant energy to utilizing EU channels to both seeking to influence the shape of European environmental policy and also as a forum for holding national governments to account for environmentally damaging actions and processes. In addition, direct elections to the European Parliament have enabled a number of European Green parties to shape a vociferous green voice within the European Parliament (EP).

However, the image of the EU as ‘environmental protector’ is not necessarily as clear-cut as these initial comments might suggest. Indeed there is strong evidence for a counter argument which proposes that the very underlying rationale of the EU itself represents a major factor in contributing towards increasing environmental problems within Europe, rather than providing effective solutions. How can the EU deal effectively with environmental problems when arguably the underlying cause of many of these problems has been the pattern of continuous economic growth and industrial development, upon which the EU has itself focused? There is therefore evidence to suggest that the EU may, on the one hand, represent a key factor in the continued expansion of modern environmental problems; while, on the other, it may turn out to be a primary focal point through which to instigate potential environmental solutions.

This article will therefore critically examine the EU’s developing relationship with the Green agenda, in an attempt to identify links between the emerging pattern of green politics and the patterns of policy-making within the EU. It examines why and how the environment has become such a significant part of the EU’s activities and assesses the extent to which we are witnessing the ‘Greening’ of the European Union. Can sustainable policies be effectively instigated given the underlying economic rationale that has arguably been the driving force behind the EU’s development so far?

To tackle these questions, this article examines the evolution of an environmental agenda within the EU. It firstly examines the barriers to progress presented by the processes and structures of EU decision making. It then provides an overview of the historical development of environmental policy within the EU and identifies the overriding principles and objectives of the EU's EAP, which have provided the framework for policy development. Focusing more closely upon the emergence of a sustainability agenda, the article focuses in more detail upon the Fifth EAP; identifying its strengths and weaknesses in advancing a process of sustainable development within the EU. The article concludes by assessing the progress made by the EU within the environmental sphere and identifying the future direction of environmental policy at this level.

## **2. The Challenges of EU policy making**

In trying to provide a brief overview of the development of environmental policy, it must be emphasized that the institutions of the EU represent a far from homogeneous body of organizations. As such, Green politics must seek to infiltrate and gain influence through a variety of diverse channels. To illustrate the breadth of the channels available, we employ the template devised by Peterson and Bomberg to understand EU decision-making. This identifies three main types of decision-making rules; history making, policy setting and policy shaping. These templates provide a useful guide to the different roles played by the institutions and their interaction.

'History-making' decisions are the decisions that change the nature of the EU. They alter procedures, rebalance the powers of the institutions, expand the remit of EU, etc. The role played by the European Council in these history-making decisions means that they set the overall policy framework for the EU, but tend to have little impact upon the day-to-day policy decisions taken by the EU. History-making decisions were crucial in the EC getting competence in environmental policy and also to explain the general direction that policy takes. However, these types of decisions tend to focus on the process of European integration. To understand, the 'day-to-day' decision-making process we need to examine how policy is 'set' by institutions and how the policy is 'shaped' by actors within the institutions and others interests.

'Policy-setting' decisions occur at the end of the EU's legislative process. Policies can be said to have been 'set' when directives or other legislative tools are issued. This type of decision making tends to follow the standard community method whereby the Commission proposes, Council of Ministers disposes, and the European Parliament amends. This system often results in the status quo being the most common outcome, leading to the failure to adopt often important policy measures. To understand these decisions therefore, it is essential to look at the bargains reached within and between the institutions. Within the environmental field, it is certainly the case that some institutions and certain sections of the Commission are seen as 'greener' than others. Crucially, these different views on the environment impact upon policy design and implementation.

'Policy-shaping' decisions do not decide EU policy; rather they determine policy details or what policy options will be considered. They occur early in the process when policy is being formulated, often before the formal legislative process has begun. This pre-

legislative stage is where most lobbying occurs, as once political agreement emerges the process often becomes inflexible. This style of decision making revisits part of the Monnet method, with the Commission trying to forge consensus amongst different actors. The process is open to networks that may work in different ways. For example, the sectorized nature of policy networks may prevent policy change in the agricultural sector, as significant actors wish to preserve the Common Agricultural Policy (CAP). However, in other fields including more general environment policy, the nature of the actors may push EU environmental policy forward.

### **3. The Historical Transition towards an EU Environmental Policy**

The Environmental Policy of the EEC between 1957 and 1972 has often been described as a series of ‘incidental’ measures. There was no explicit mention of the environment in the Treaty of Rome of 1957, although this is not surprising given public opinion at that time. The focus of the EEC then, was primarily to establish a common market and to ensure economic growth. Despite this, expansion of EEC competence did occur regarding environmental issues, mainly through a broad interpretation of Article 2 of the EEC Treaty, which states that the EEC should aim for a ‘harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the states belonging to it.’

As the environment was not one of the common policies listed in Article 3, the main legal basis for action were Articles 94 [100] and 308 [235]. Both provided a tentative constitutional foundation for the EC’s actions within the environmental sphere. Article 94 [100] allows for the Council to ‘issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.’ Article 308 [235] additionally allows the Council, acting unanimously on a proposal from the Commission, to take appropriate measures ‘necessary to attain, in the course of the operation of the common market, one of the objectives of the Community’ where there is no treaty provision, although this was seen as a last resort. An excellent example of the type of policy adopted during this period was the 1967 directive harmonizing the classification, packaging and labeling of dangerous substances. While this clearly concerned the functioning of the Common Market, it also had a significant environmental impact. It is important to note however, that both Article 94 [100] and 308 [235] need unanimity in the Council, with the European Parliament only having the right to be consulted.

The emergence of environmental policy was therefore based solely on a broad interpretation of the Treaty of Rome, which allowed the Community to pass a number of initial pieces of environmental legislation. However the need for unanimity and the restricted basis for action under Article 94 [100] clearly hampered the development of EEC environmental policy. During this period therefore, environmental policy reflected more of an *ad hoc* pattern of development rather than a coherent policy strategy. These developments often emerged as measures that sought to abolish obstacles to trade between member states, rather than from any significant environmental commitment on behalf of the Community.

### **3.1 Initial developments: 1972–1986**

The 1972 Stockholm UN Conference on the Human Environment has been identified as a major turning point in the development of EC environment policy. Growing public concern about environmental problems and rising support for Green parties and pressure groups placed the issue high upon the international political agenda. The UN meeting was influential in focusing the minds of the EU leaders towards the environment. At the same time, the trade implications of newly introduced German environmental legislation played an equally important role. Environmental legislation was also prioritized due to the need to eliminate trade distortions between Member States. Different national legislation on pollution potentially represented a significant barrier towards the creation of a common market.

The response to these developments was an EU Heads of State Summit in Paris, 1972, where the leaders declared that economic expansion should not represent an end in itself, but should ‘result in an improvement in the quality of life as well as in the standard of living ... so that progress may really be put at the service of mankind’. The Leaders invited the Community institutions to develop an Action Programme on the Environment, which resulted in the First EAP being launched in 1973.

The most important developments came towards the end of this period. The European Court of Justice (ECJ), in a landmark case [C-91 and 92/79], offered support to the Commission by upholding the use of Article 94 [100] as a basis for environmental policy. It held that environmental provisions could be based on this article provided they were linked to the setting up or operation of the internal market. The ECJ also ruled that environmental protection justified certain limitations on the free movement of goods.

The result of this informal integration of environmental concerns was a significant increase in EU environmental legislation. Between 1973 and 1985, 120 directives, 27 decisions and 14 regulations were implemented. This sudden increase in policy activity resulted in the environment constituting one of the fastest growing areas of EU policy during this period. However, it is important to consider that this dramatic increase can, in part, be explained by the fact that the EEC was starting from an almost non-existent policy base prior to 1973. The expansion was also aided by the fact that environmental policy was one of few areas where, during a period of stagnation in the development of the European project, agreement was being achieved amongst the member states. In light of this, the expansion of environmental legislation, even if its quality was at times debatable, represented a major step forward.

### **3.2 A Formal Basis for Environmental Policy: The Single European Act (SEA) 1987–1992**

While EC environmental policy had largely developed in the absence of a formal legal basis, this changed with the advent of the SEA. Amendments to the EC Treaty saw the introduction of a whole title (Title VII) dedicated to the environment. It appeared in Part Three: Policy of the Community. With this the EU finally gained explicit competence to act in the environment field. Articles 174-6 [130 r-t] provided this, although to a large

extent the areas of activity were not new. The SEA in essence, principally provided the EC with competence in the areas within which it had already, informally, been active.

Article 174 [130r] listed the principles of Community environmental ‘action’; Article 175 [130s] identified the legislative procedures to be adopted, which mainly involved unanimity in the Council, with a consultative role for the EP; while Article 176 [130t] allowed member states to maintain or introduce more stringent protective measures as long as they were compatible with the rest of the Treaty. The article which had assisted the EC in developing a body of environmental legislation, Article 94 [100], was now accompanied by Article 95 [100a] which instructed the Commission to take ‘as a base a high level of [environmental] protection’ when proposing measures for the establishment and functioning of the internal market. The new article also facilitated decision-making, in that proposals were to be adopted by the Council acting by Qualified Majority Vote (QMV), while the European Parliament’s powers were also increased. Finally, a derogation clause was inserted, allowing member states, after a harmonizing measure had been adopted, to apply national provisions *inter alia*, to protect the environment.

The SEA, while undoubtedly expanding the EU’s environmental dimension, created a confusing legislative structure, with a distinction being drawn between environmental legislation linked to the completion of the Single Market, on the one hand, and legislation designed to protect the environment, on the other. This in itself would be problematic, but the fact that different legislative procedures applied in each case further added to this confusion. It also created a situation whereby the Commission and NGOs were forced into attempting to create tenuous links between the proposed environmental legislation and the Single Market to ensure that it went through under the more favorable Article 95 [100a] rather than Article 175 [130s]. This left the Commission open to legal challenges, as the use of the wrong legal basis for legislation could be challenged before the ECJ as an abuse of the principles of institutional balance. On a more positive note however, the SEA in Articles 95 [100a] and 176 [130t], recognized the right of member states to maintain higher standards in this field.

The recurring tension between higher environmental standards and the maintenance of the Single Market is evident within the SEA. Deciding which environmental measures are linked to trade harmonization and which are not, is often a matter of interpretation. Resolving this conflict has often been left to the ECJ, which has been shown to favor maximalist interpretations of European law in many cases. An excellent example of this tension, and the influence of the ECJ, was the Danish Bottle case. In the 1980s Denmark passed legislation to the effect that all beer bottles sold in Denmark had to be recyclable. This legislation meant that Denmark had higher standards than the rest of the EU. Non-Danish brewers argued that this law constituted a restraint on trade as distance made it difficult for them to retrieve and re-use the beer bottles, a problem not faced by Danish brewers. The case went to the ECJ which ruled in 1988, clearly mindful of the recent introduction of Article 176 [130t] into the SEA, that whilst the law did restrain trade, it had legitimate environmental protection aims and would be allowed to stand.

Whilst the SEA failed to resolve the tension between issues of trade and environmental protection and undoubtedly created significant ambiguity regarding the use of Articles

95 [100a] and 175 [130s], in many ways it represented a ‘watershed’ in the development of the EU’s environmental policy. Many analysts suggested that, based upon an interpretation of the SEA’s amendments, for the first time it was, *de jure*, correct to speak of an EU environmental policy. Some even suggested that the measures introduced had actually at times far exceeded the standards necessary purely to maintain the requirements of a single market.

### **3.3 Further Developments: The Treaty on European Union, 1993–1998**

EU Environmental policy was further strengthened and extended by the Treaty on European Union (TEU) in 1993. While primarily building upon the foundations provided by the SEA provisions, it also attempted to clarify some of the ambiguity evident within that treaty. While Article 174 [130r] stated that the EC was only competent to pursue ‘action’ relating to the environment, post-TEU reference is directly made to ‘Community policy on the environment’. The environmental dimension also received a heightened profile with ‘environment protection’ being mentioned in the Preamble to the TEU, respect for the environment being inserted into the principles of the EC (Article 2), and ‘a policy in the sphere of the environment’ being explicitly listed in Article 3 as an activity of the EC. The TEU also set out to simplify EU decision making in general, and especially to try and clarify the confusion previously caused by Articles 95 [100a] and 175 [130s].

To a large extent, the long-standing tension between trade and environment remained unresolved, with the conflict over the legal basis of action between the ‘environment procedure’ and the ‘approximation of laws’ procedure for the internal market allowing Member States to decide how strictly to interpret and implement the rules. This conflict relates to the degree to which member states are able to impose stricter standards than those agreed at the Community level. The compromise on decision-making procedures resulted in continued complexity, with four procedures now applicable to different types or aspects of ‘environmental’ legislation. Article 95 [100a] remained largely unchanged, although the EP was given the right of co-decision, increasing the powers of the EP (an institution traditionally sympathetic to green concerns), *vis a vis* the Council in this aspect of environmental policy.

The general application of QMV to Article 175 [130s] was blocked by the Spanish government, resulting in three different voting procedures. The general application was QMV in the Council and co-operation with the EP, although for ‘general action programs’, which set out the priority objectives to be attained, the EP gained the right of co-decision. However, for measures involving taxation, town and country planning, land use and choice of energy, unanimity remained in the Council and the EP was only to be consulted. Instead of clarifying the legislative procedures therefore, the TEU merely presented policy makers with a distinctly confusing legal minefield.

### **3.4 A Comprehensive Review? The Treaties of Amsterdam and Nice, 1999–2001**

On May 1 1999 the Treaty of Amsterdam came into force after ratification by the last Member State, France, initiating what one commentator described as the ‘Fifth phase of the historical development of European environmental policy’. Environment was one of

the few policy areas to be comprehensively reviewed at the 1996-7 Intergovernmental Conference (IGC). This revision was designed to try and rectify some of the Commission's criticisms of the TEU's provisions on the environment. To a large extent they reflected the criticism that when faced with a tension between environmental protection and economic integration, the Community often tended to prioritise the latter over the former.

The impact of the Amsterdam Treaty concerned tasks, principles and decision-making. On the former, 'respect for the environment' in Article 2 of the Treaty of Rome was reinforced. Henceforth, the Community was to promote 'a high level of protection and improvement of the quality of the environment'. This was reinforced by the insertion of a new Article 6 which declared that 'environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities..., in particular with a view to promoting sustainable development'.

The issue of sustainable development has long caused problems within the EU. Although the term has been used since the TEU, it is not used consistently. For example, the Maastricht Treaty interchanges at will between the concepts of 'sustainable progress', 'sustainable growth' and 'sustainable development'. The clearest illustration of the EU's weak commitment to sustainability however, can be found in the TEU revised Article 2 which calls for 'sustainable and non-inflationary growth respecting the environment'. This situation was particularly problematic given that the Fifth EAP, discussed in more detail later, refers explicitly to 'sustainable development' throughout. The Action Programme and Treaties therefore appeared to be pursuing quite radically different and diverse goals. To some extent the Amsterdam Treaty tackled many of these problems. Although it did not go as far as some member states wished in the field of environmental protection, it did contain a less equivocal commitment to sustainable development.

With regard to decision-making, a first development was to include the Committee of the Regions for consultation under Article 175 [130s]. Second, Amsterdam managed to simplify the decision-making procedures, by reducing the main procedures to co-decision and simple consultation. Co-decision applies for general environmental measures [Article 175(1)] and for the environmental action programs [Article 175 (3)], enabling both to now follow the standard community model. Here the right of initiative lies with the Commission, the Council and EAPs co-decide, and QMV is used in the Council. Decision-making is different under Article 175 (2), which deals with taxes, town and country planning, land use or energy supply. Here the Commission still has the right of initiative, but the Council voting rule is unanimity and the EP is only consulted. This simplification is intended to make environmental policy clearer and also to reduce the risk of conflict over the legal basis for a measure, noted earlier.

In an amendment to Article 95 [100a], Amsterdam tried to resolve the trade/protection tension by allowing governments, once a Community measure had been adopted, to keep existing national provisions or to introduce higher environmental standards than those set for the EU as a whole, as long as they were based upon scientific evidence. These changes, while far from revolutionary in nature, did continue the trend of increasing the powers of the EP over environmental regulation, while also allowing

member states more leeway to adopt stricter standards if they so wished. The Treaty of Nice (December 2000) altered very little to do with environmental policy. The main development was that Article 175(2) was broadened to include *measures significantly affecting quantitative* management of water resources or *interfering with the availability of those resources* (amendments in italics). This was inserted at the behest of the Portuguese, who obtain the majority of their water from rivers that originate in Spain. The significant omission was that taxation matters still required unanimity.

#### **4. Identifying the Principles and Objectives of EU Environmental Policy: The Evolution of the Environmental Action Plans**

The principles of EU environmental policy could be said to be contained within the First EAP. The developments of the EAPs, in many ways, provide a useful picture of the progression of EU environmental policy. The general purpose of the EAPs is to ‘lay down basic principles of environmental policy’ and thereby to act as a framework within which specific legislation would be enacted. They also assert current priorities and commitments and provide a framework within which future action may be shaped.

The First EAP, which came about as a result of the Paris Summit in 1972, can therefore be seen as marking the beginnings of a coherent environmental policy within the EU, as it set down the basic principles of EC environmental policy. This first plan, covering the period 1973-76, was representative of much of the environmental thinking of the time, focusing mainly upon reactive policies such as pollution control and general remedial measures. Significantly however, even at this early stage there was a broad recognition that effective environmental protection could only be implemented if potential environmental effects were considered throughout ‘all technical planning and decision-making processes’ both at national and Community levels. That said, the First EAP was designed less around environmental protection *per se*, and more around a general aim of improving ‘the setting and quality of life, and the surroundings and living conditions of the peoples of the Community’.

The First EAP also reflected the EU’s lack of legal competence in the field of environmental protection at this time. As a result, the programmes were not legally binding, but provided a framework for action on environmental issues. The fact that they were political declarations meant that they had to be agreed in the Council of Ministers by consensus. Due to the non-binding nature of the programmes, the Council of Ministers could usually approve the general approach of the EAP, without committing itself to every point. Despite this, the Commission was able to exploit a clause in this first EAP to embark upon a rolling process of modification and reform of the underlining principles of policy. The Second EAP (1977-81) largely continued this pattern, focusing upon similar measures of pollution control rather than prevention.

The Third and Fourth EAPs, however, while keeping to the general policy framework outlined above, tried to reflect the growing concern over environmental issues, emerging during the ‘green wave’ of the late 1980s. The most important element of the Third EAP (1982-86) was the move away from single specific measures to a clearer policy line and an increased emphasis upon integration into other relevant policy sectors. The Fourth EAP, covering the period 1987-92, listed specific actions for

various sectors and proposed the use of economic instruments for the first time. Both Programmes emphasised more proactive, preventative measures and made more stringent attempts to integrate environmental protection into other policy areas. This is an important development within the emergence of EU environmental policy, as it made more explicit the argument, found initially within the First EAP, that if we are to solve environmental problems, then environmental issues must be integrated into all aspects of policy development and not viewed in isolation. Both the Third and Fourth EAP's were heavily influenced by the ideology of ecological modernisation, which argues that environmental protection is not in competition with, but rather an essential precondition for, growth and development.

The most important principles of all the EAPs include an acceptance that prevention is better than cure and that the polluter should pay. The 'prevention principle' and the 'polluter pays principle' are integral parts of the economic problem solving dialogue and form the basis of EU environmental thinking. The prevention principle is important as it tries to tackle pollution at source and is based upon a belief in the ability of technology to develop solutions to environmental problems. The polluter pays principle attempts to incorporate environmental externalities into industrial production costs, ensuring that the final costs are a more accurate interpretation which take environmental concerns into account. The EAPs also wanted to see the incorporation of environmental concerns at the earliest possible stage in the decision making process, whilst accepting that subsidiarity was important. The EAP's have also responded to one of the major environmental concerns of transnational pollution, by stating that activities in member states should not take place at the expense of environmental deterioration in other member states. The EAPs also argue that exploitation of nature and natural resources should be avoided and that policy decisions must take account of the interests of developing countries, recognizing the international dimension of environmental issues. Finally, they acknowledge the important role that raising public awareness plays in tackling environmental problems.

There have, however, continually been a number of problems associated with the EAP's attempts to integrate environmental issues into all aspects of EU decision-making. The main weakness of the first four EAPs, as previously mentioned, was the fact that they were guides to action rather than legally binding policy decisions. Consequently, any calls for integration were also not legally binding, meaning that the core principles of environmental policy development were rarely translated into action.

Implementation of the first four EAPs was also problematic because they were largely prescriptive and tended to impose legislation from the center to deal with pressing environment concerns. These so-called 'command-and-control' directives and regulations tended to reflect the legislative traditions of member states who were actively engaged with environmental policy making at national level. They were often characterized by direct regulation from the center; setting uniform environmental standards and, in some cases, prescribing the methods required to meet these standards. Estimates suggest that by 1998 over 200 pieces of secondary legislation involving environmental protection had been adopted by the EU, with around 90 per cent in the form of directives. This is unsurprising as directives allow member states to choose the most appropriate method of implementation and as a result are seen as a flexible way of

introducing legislation that reflects different national traditions. The other main advantage of these ‘command-and-control’ measures was the fact that the costs of compliance were largely borne by national and local government and individual economic actors rather than on the relatively small Community budget. However, the adoption of this approach to environmental policy making also helps to account for the high levels of non-compliance with EU environmental legislation by member states. This is an important and often overlooked area of study, as implementation is at the ‘sharp end’ of the policy process. As the present Environment Commissioner, Wallström noted the regulatory framework for the environment is broadly in place, it is just not always fully implemented. The Commission’s priority is therefore to ensure Member States fully implement existing legislation.

Problems also existed in relation to the bureaucratic support for the environment. The role of the Commission’s Environment DG has also created difficulties. Having a separate DG for the environment, while heightening the profile of environmental issues, tends to single the environment out as a distinctive and separate policy area. However the nature of environmental problems cut across a broad number of different EU policy sectors; in particular, trade, agriculture, industry, taxation, energy, transport, aid and scientific research. This fact can often bring DG Environment into conflict with other DGs, illustrating the difficulties faced when attempting intersectoral policy co-ordination within the EU. For example, trade and environmental priorities can conflict. An excellent example is the issue of leghold traps, which pitted DG Environment against DG External Relations. A 1991 Regulation set out to ban the import of furs from countries that had yet to ban the use of leghold traps. DG External Relations argued against the Regulation, which had been agreed by the Environment Council, citing adverse trade implications. In the end DG External Relations appeared to have got its way when in 1997 a watered-down proposal was presented to the Council.

Another problem for DG Environment is the fact that it is still largely regarded as a junior player within the European organization. Indeed its location, on the outskirts of Brussels, gives a possible indication of the perception of the environmental DG within other parts of the Commission. Whilst the remit of DG Environment is wide, it has few day-to-day responsibilities for directly applying existing EU environmental policy, as this task usually lies with either national or regional governments. Its small staff, many of whom are on secondment from other EU institutions, private organizations and foundations, and a small budget, also weakens it. Therefore, DG Environment lacks the power and influence of many of the larger DG’s.

## **5. Towards Sustainability: The Fifth EAP**

All the factors highlighted above have obviously hindered the development of EU measures to tackle environmental pollution. Despite that, the EAP’s have largely become a cornerstone of the EU’s environmental policy and have helped to advance a dimension of Community activity that was not initially envisaged within the original Treaties. A commitment to environmental policy making from those engaged within this field in the Commission has enabled the development of gradually more complex and far-reaching EAPs. As these programmes have evolved, so the scope for environmental policy within the EU has become more ambitious and more of a key commitment. It

was this incremental expansion of policy competence in the environmental field that created a framework for a significantly more expansive Fifth EAP.

Despite making progress on environmental issues within the first four EAPs, statistics continued to show a steady increase in environmental degradation within the EU. In particular, key problems concerned the rise in CO<sub>2</sub> emissions from fossil fuels, nitrous oxide emissions per head, and the quantity of municipal waste. The Fifth EAP noted that a 20 per cent increase in CO<sub>2</sub> emissions was likely to occur between 1987 and 2010 if there was no change in the current energy demand growth rates. Given these sorts of statistics, it was clearly evident that previous EU environmental policy, although marking a significant improvement, was not having the desired environmental impact; especially in terms of integrating the environment into other major policy areas. The Fifth EAP represented an initial response to this failing. The other main influence was the Rio Earth Summit, which many viewed as the beginning of a new ecological era. The Fifth EAP was prepared just before the summit and shares most of the strategic objectives and principles agreed for Agenda 21 at the UN Conference on Environment and Development in Rio de Janeiro, 1992. Indeed the Fifth EAP represented the main vehicle for the implementation of Agenda 21 within the EU.

The Fifth EAP, 'Towards Sustainability', was said to constitute a positive break with the approach chosen in all preceding EAPs. It recognized that environmental protection was fundamental to the development of the EU; a clear break with the thinking expressed within the initial EAPs. The Fifth EAP identified the purpose of environmental policy as 'to initiate changes in the current trends and practices which are detrimental to the environment, so as to provide optimal conditions for socioeconomic well-being and growth for the present and future generations'. The mention of 'future generations' indicates that the Fifth EAP accepted, at least in theory, the concept of intergenerational justice. To achieve this justice, it attempted to incorporate sustainable development into all EC actions, policies and laws; although, as already mentioned, this commitment to sustainable development was, until the Treaty of Amsterdam, at odds with the commitments outlined in the Treaties.

One significant aspect of the Fifth EAP's break with the past, was that it sought to supplement the 'command-and-control' directives and regulations, which were the main instruments in all previous EAPs, with more proactive policy instruments. The Fifth EAP broadened the range of environmental policy instruments to include consideration of taxes and subsidies, voluntary agreements, as well as education. These new instruments were intended to 'provide the efficiency and positive incentives which command and control lack', without increasing the regulatory burden upon industry.

'Command-and-control' measures had often been criticized for being not only economically inefficient, but also environmentally ineffective and democratically illegitimate. The imposition of uniform standards was seen to be economically inefficient, as it did not take into account the variable pollution abatement costs facing individual firms or the local environmental situation. The result tended to be that some firms were forced to over regulate, whilst others were able to meet targets which did not actually improve the environment; hence, the criticism of environmental ineffectiveness. In addition, they were seen to lack democratic legitimacy, because the

public and environmental groups often lacked the expertise and resources to play an active role, whilst polluters had an obvious incentive to ‘capture’ regulators to shape or block policies in accordance with their own economic self-interest.

The Fifth EAP argued for the importance of seeking to provide long term sustainability. This, they argued, must be a commitment for the long term and not just for the duration of the Fifth EAP (1993-2000). Again, this commitment provided further justification for the increased integration of environmental concerns into all EU policy areas. In addition, the Fifth EAP shared the commitments to participation and decentralization, which are often encapsulated within the broader conceptual definitions of sustainability. As such the Fifth EAP emphasized a transition from the traditional ‘top-down’ approach, reliant upon Community legislation towards a new ‘bottom-up’ approach, involving all stakeholders. The introduction of the concept of ‘shared responsibility’ was intended to involve agents at global, EC, national, regional, local and also personal levels. This undoubtedly marked an attempt to reflect the concerns voiced within Agenda 21 as well as the ‘grass-roots democracy’ approach favored by many Green parties and environmental activists. It can also be seen as an attempt to correct the democratic imbalance found within previous command-and-control mechanisms.

This ‘bottom-up’ approach is also evident when considering the process of implementation. In contrast to previous programmes, such as the Third EAP which dealt with implementation in just three lines, the Fifth EAP contained a range of proposals designed to strengthen consultation, via the creation of a number of strategic groups linking national inspectorates and interest groups, increased national reporting and enhanced auditing. All these measures were intended to improve the implementation records of member states by ensuring that legislation reflected their own concerns rather than being identified as a top-down imposition.

The main focus of the Fifth EAP dealt with planned objectives, policies and implementation programmes for the environment for the period 1993-2000. It focused on the main environmental issues confronting the EU; such as climate change; acidification and air pollution. Again, a radical departure from previous EAPs was the focus on the source of pollution not the receptor. The Fifth EAP tried to offer an integrated policy for the main economic sectors responsible for damage to the environment (industry; transport; energy; agriculture and tourism) rather than focusing, as previously, on the various environmental elements (air, water etc.). For each sector, the Fifth EAP set targets, highlighted the policy instruments which should be used in order to reach these targets, provided a time frame for action, and identified the most significant responsible actors (public or private and from EU to local authorities). This final element was designed to reflect a view of shared responsibility, where all stakeholders were required to ‘do their bit’ for the environment by changing patterns of consumption and production, implying a less state-centric approach to environmental policy. The importance of decentralization was evident in the fact that 40 per cent of the Fifth EAP was the implementation responsibility of local government. Finally, the role of the EU as a global environmental actor was acknowledged, with the acceptance of international co-operation within the framework of Agenda 21 and the Fifth EAP.

## 5.1 Assessing the Impact of the Fifth EAP

A Commission progress report, halfway through the course of the 5EAP, noted a mood of ‘cautious optimism’ regarding the impact of the Fifth EAP. They believed that 70 per cent of commitments at EU level had been achieved, but that progress in the member states was more difficult to discern. However, DG Environment noted its disappointment over the speed with which environmental concerns were being integrated throughout the Commission. It was suggested that the Fifth EAP had had limited impact in influencing all policy sectors and that progress had varied from sector to sector. However, as stated earlier, it was also recognized that the process could not be viewed as a short-term operation and that long term success would be based upon a process of ‘increased education, training and changes of attitude’.

In 1996 the Commission adopted a draft decision, based upon the conclusions of the Progress Report and the ‘State of the Environment’ report, aimed at moving the EU further towards sustainable development, This draft decision identified five priority areas in which EU action needed to be improved. They were:

- improved integration with other policy sectors;
- the use of a wider range of policy instruments;
- increased implementation and enforcement measures by improved and simplified legislation;
- raising public awareness;
- reinforcing the EU’s international role.

The fact that many of these priority areas were merely restating the original aims of the Fifth EAP offers some idea as to the extent of the problem of integration and raised many questions regarding the extent of its practical ability to meet its objectives.

The Commission’s revised proposal was sent to the EP and Council for adoption under the co-decision procedure. The EP adopted 28 amendments to the Council opinion, which the Council was unable to accept; resulting in the issue going to conciliation. Finally, 30 months after the initial Commission proposal, a co-decision was reached. The primary result of the conciliation process was that the text was further weakened, especially with regard to the integration of the environment into agriculture and the issue of environmental liability. However, the so-called ‘Cardiff Process’ did attempt to ensure that different sectoral Councils took sustainable development issues into account and that they would report to future EU summits on their strategies for integration. At the Vienna summit in December 1998, the Transport, Energy and Agricultural Councils reported on their initial strategies. At the same summit, three more Councils – Industry, Internal Market, and Development – were invited to submit similar reports to the following summit in Helsinki. The ‘Cardiff Process’ also required the Commission to strengthen its assessment of its own proposals as the ‘green star’ scheme had proved to be inadequate. The Commission was also required to produce ‘A global assessment of the implementation of the programme’. In particular this assessment was to look at whether any of the objectives and priorities required revising or updating. The conclusions emerging from this assessment provided a foundation for the development of the Sixth EAP.

The legal problem associated with the first four EAPs was also evident in relation to the Fifth EAP. Critics argue that again the primary weakness of the action programme was that it was not binding on EU member states or in practice on individual DGs within the Commission. This was largely because the Council had only approved the ‘general approach and strategy of the programme’ and not its detailed targets and timetables. This approval was given in the form of a non-binding resolution. This left the action programme in a significantly weakened position since it lacked any real teeth with which to enforce its proposals. However, on a positive note, Article 175 [130s] of the TEU gave a new legal status to general Action Programmes on the environment, which implies that future Action Programmes may well become legally binding.

## **6. Towards a Sixth EAP**

Despite the criticisms discussed above, Environmental Action Programmes continue to form a crucial part of the EU’s attempts to combat environmental pollution. At the time of writing, the Commission has recently finalized proposals for the Sixth EAP. To a large extent, the proposals attempt to tackle the areas where the Fifth EAP failed to make significant progress. For example, it highlights four main key areas where action must be taken:

- climate change;
- environment and health;
- protecting nature and diversity;
- resources and waste management.

Finally, once again the proposals re-emphasize the need to integrate environmental concerns into economic sectors and other policy areas to ensure the environmental objective of a sustainable society is achieved. This need for integration has been a key factor in the pursuit of an effective environmental policy and its implementation remains crucial to the success of the EU’s strategy. The Commission anticipates that the Sixth EAP will be in force from early 2002.

## **7. A Future for Green Politics at the EU level?**

It is clear from the discussion above that while there is certainly evidence of a far greater emphasis upon environmental issues within the contemporary EU, much still needs to be done if the Union is to be able to proclaim itself the proactive environmental guardian that it has the potential to become. Undoubtedly progress has clearly been made in the field of EU environmental legislation. On quantitative grounds one would have to admit that the requirements placed upon EU member states to maintain broad environmental standards has rapidly expanded. From no legal competence in the Treaty of Rome, the EU now has competence in a full range of environmental policies, covering policy spheres with a broad diversity, from issues concerning water pollution to car recycling. The aims and objectives of the Fifth EAP, for example, were far more advanced than the EU’s initial steps within the environmental field. The EU itself has moved away from relying upon interpretations of legislation to a commitment to a ‘sustainable’ Union.

The expansion of EC policy competence has without doubt produced some significant, practical environmental achievements as well. These included reducing CO<sub>2</sub> and other greenhouse gas emissions by 2.5 per cent between 1990 and 1998, cutting emissions of sulfur dioxide by fifty per cent between 1980-95, and there have also been marked declines in the amounts of lead and mercury in the atmosphere. The competence of the EU to act in this area is rarely questioned and indeed it appears that there is a growing consensus that the EU level is, perhaps, the best level at which to tackle issues that ‘know no borders’.

However, DG Environment and many environmental actors recognize that there are still major problems that must be overcome, especially in terms of how policy is made. Despite constant reference within the Treaties and the various action programme very little has been done to fully integrate the environment into all relevant policy areas. These problems are also exacerbated by a lack of political will on behalf of some of the member states, which has been reflected in the poor levels of implementation of some EU environmental legislation. This places an important emphasis upon the role of environmental campaigners to act as watchdogs on member states and to ensure their compliance to environmental legislation. There is also reluctance on the part of member states to give up unanimity in the Council for the so called ‘red-line’ issues such as tax, which again remained off the agenda at the Nice Summit. While such issues remain a significant stumbling block, the integration of environmental concerns throughout relevant EU policy areas will continue to be sporadic.

One must also question the extent to which there is support for enhanced environmental legislation within the EU. Clearly this resistance will be an influential factor in any future attempts to increase the commitment towards a sustainable development agenda. Although DG Environment in particular may have adopted a broader environmental discourse, it is harder to identify the same process across all Commission DGs. Beyond this small ‘environmental haven’ it would appear that more traditional economic and industrial perspectives continue to predominate. While stricter environmental controls may be emerging, the pressure still remains upon the environmental campaigners to justify why change is needed and pollution prevented, rather than on the polluters to justify why existing methods should be continued and current pollution levels maintained. This imbalance is further reflected by the reliance upon campaigners to act as ‘watchdogs’ and enforce compliance upon member states to EU environmental regulations.

However, for green actors, all is not lost. There is an increasing level of sympathy for the sustainability discourse within the EP; an institution often receptive to the views of the environmental movement. In addition, we must also consider a pattern of changing attitudes towards the environmental discourse from among a number of influential member states. Recent years have witnessed an increase in support for Green parties at both European and national level. The emergence of Green parties within member state governments therefore, represents an important new channel of influence and pressure. Indeed, the reluctance of countries such as France, Germany, Sweden and Finland to sign up to the compromise emissions deal, brokered by John Prescott between the EU and the USA at the end of the Hague Climate Change summit in November 2000, marked a significant departure away from the ‘any deal is a success’ mentality often

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