



Executive Summary

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This book provides a short outline of EU environmental policy history, analyses and presents some 60 pieces of EU environment and nature protection legislation, most of which have been adopted in the last 15 years, establishing links between the different pieces of legislation. Against the current decline in environmental policy and the trend towards its subordination to jobs and economic growth, the book encourages an informed and intelligent use of existing legislative networks and calls for resistance to attempts to water it down.

THE ENVIRONMENTAL CHALLENGE REMAINS

Europe's environmental policy started in 1973, following the 1972 UN Conference on Environment, addressing the public and scientific concerns about the "limits of growth". Today - 30 years later and with an impressive body of environmental legislation in place - similar or identical concerns remain: environmental progress through technology has been outweighed by growing consumption and natural resource use. Well known environmental problems of increasing natural resource use, biodiversity loss, destruction of natural habitats and long-term pollution of most environmental media, persist.

There have been ups and downs in Europe's environmental policy making over time, but so far the resulting legislation has not led to any real structural change which would significantly impact economic and fiscal policies. Attempts to integrate environmental policies into other policies and to correct wrong market mechanisms were pursued in the 1990s but failed to deliver.

This book builds on the thesis that existing and legally binding environmental targets and deadlines, a lot of which were set in the 1990s, have great potential and once properly enforced and supported by existing instruments, can lead to real change. Following the thesis that environmental protection derives from clear objectives, targets and deadlines in order to develop the necessary power to achieve structural policy changes, the main part of the book analyses legislation setting objectives, targets and timetables for different environment media (sectoral legislation). The second part analyses horizontal legislation, needed to provide the set of instruments required to achieve the environmental objectives.

GENERAL OBJECTIVES, SPECIFIC TARGETS AND DEADLINES AND PRINCIPLES

The EU provides a hierarchy of objectives and targets starting with the Treaty's objective of a *high level of protection and improvement of the quality of the environment*. Following on top of this hierarchy is the objective to *halt biodiversity decline by 2010*, which is further specified by the EU's nature and environmental media protection legislation.

The most concrete and enforceable way of specifying those general objectives is through **Environmental Quality Standards** and **Emission Limit Values**. Both have a different theoretical and historical background and both have their strengths and weaknesses. Emission Limit Values can drive technological progress in order to minimise emissions but fall short of achieving structural change, dealing with diffuse pollution and promoting use of natural resource saving alternatives to provide societal services. Environmental Quality Standards on the other hand should

present the “ecological truth” and thus are a constant driver to move towards sustainable development, but often suffer from lack of data or scientific uncertainty. A combination of the strengths of both approaches—minimise emissions to achieve or go beyond set environmental quality standards – seems to be the most sensible option to implement a precautionary policy as required to address long-term and complex threats to the ecosystem.

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The establishment of **Natura 2000**, a European network of nature conservation areas, as a “safety net” for Europe’s biodiversity, has a high public profile, but apart from the already missed 2000 target to designate sites, suffers from lack of enforceable targets with deadlines and contradictory EU infrastructure and agriculture funding policies. Better integration with existing air quality and aquatic ecosystem targets would provide a great potential to strengthen nature protection. Since 2005 payment of farming subsidies is conditional to compliance with EU nature conservation obligations. Better use of existing environmental assessment rules for projects and plans as well as complaint and court procedures will be another way to halt detrimental developments. Finally great uncertainty exists about the financing of Natura 2000 for 2007-13. For many countries (especially Southern and Eastern) sufficient EU co-financing is a pre-requisite for success.

Of outstanding strength are the targets set in **air quality** and **climate change** policies. Those include the air quality objective of “*not exceeding critical levels and loads...*” which is further specified by the 2010 national emission ceilings, the 2005/2010 EU ambient air quality standards. By 2008-12 an 8% CO₂ emission reduction from 1990 levels has to be achieved and a long term climate stabilisation of 2°C above pre-industrial temperatures is envisaged. These targets and objectives have been followed by a number of instruments including a number of pollutants emission limit values for specific industrial activities and a cap and trade system for CO₂. Climate change is high on the political agenda and further policy progress can be expected – although the emission trading system still needs to prove its ability to deliver. The further development of air legislation on the other hand is getting under increasing economic pressure. The achievement of the already existing targets is difficult and requires substantial changes in transport and energy consumption, for which Member States largely failed to develop plans. It will be important to emphasise the synergies of climate and air policies through a focus on energy demand and efficiency measures. There are many opportunities for ECOs to influence Air quality and Climate Change policies, especially through early participation in national implementation and application of the existing EU laws. Furthermore, the EU level stakeholder and expert processes in further developing legislation are an excellent opportunity for societal influence.

A further environmental media is **water**, which only recently complemented the former narrow and use specific protection against chemical pollution (in order to achieve water resources to be fit for drinking, fishing, bathing etc...), with the holistic objective of a “*good ecological status*” by 2015, comprising the protection of habitat conditions and biological quality elements. While this objective should present a key indicator for biodiversity protection and long-term environmental sustainability, its interpretation and standard setting is largely left to Member States. On the other hand, this objective is embedded in administrative and policy instruments (like water pricing) and an EU implementation strategy, which could help to avoid its dilution when integration with other policies, like agriculture, transport and land use planning, takes place. The mutual reinforcement of water and nature protection will be a key for driving structural change.

Furthermore, full exploitation of the environmental opportunities of the Common Agricultural Policy mid-term review 2003 will be essential. But finally, the EU wide and national interpretation of “good ecological status” must deliver water status maps, which tell the “ecological truth”. Without public scrutiny and support this is unlikely to be achieved.

- 14 Completely lacking in Europe are protection objectives and targets for **soil and natural resources**. **Waste policies** can partly be understood as trying to fill this gap. Europe’s waste policy is built on strong principles; for example, the waste hierarchy, but which are rarely implemented to the letter. The setting of enforceable overall targets and deadlines is incomplete, setting some umbrella targets – like landfill biodegradable waste reduction targets (25% by 2006, up to 60% by 2016), but still missing over-arching targets on recycling and for waste prevention. Some specific waste streams have been addressed with collection and recycling targets for batteries, packaging waste, cars and electrical and electronic waste and environmental performance standards, like land filling and incineration, to support air, soil and water protection. In order to better steer Europe’s waste policy, a clear and enforceable target for the reduction of natural resource use would also need to be set. A growing awareness of Europe’s global environmental footprint and impact in developing countries can be a key driver for this.

Besides this better information about chemicals in products and their impact on environmental media including soils, will sharpen (but not substitute) the use and enforcement of existing waste management principles- in particular prevention of hazardousness – through substance bans. At national level the scope for action is great: absence of or inadequate waste management plans at local level, subsidies for waste incinerators, illegal landfills and waste shipments to avoid sound waste treatment need to be challenged.

TOOLS AND MEASURES

Above all environmental “instruments” stands the framework for **public involvement, access to information and justice in environmental matters**. The UNECE Convention from 1998 has been setting the scene, unfortunately with its implementation in Europe lacking still behind. Nevertheless public participation depends on cultural and historical aspects, which means that in any case involvement, access to information and courts can and must be tested at EU and national level in order to make progress. The potential of achieving a structural change through successful participation and court cases is substantial.

To address the **environmental impacts of economic activities** the EU provides for a few market based and management provisions. In terms of market based instruments - aiming at internalising the costs of pollution - the EU presents the **Environmental Liability** and **Emission Trading Directives**. The first has a potential large and far-reaching scope, including biodiversity and nature conservation, water and soil protection. But its effectiveness is unsure, as the political compromise reached is rather weak with many loopholes – falling even behind some existing national systems. Its success at the end depends on whether the national application ensures that the polluter will have to pay environmental damage in practice, which means that financial guarantees are established and no permit defence is allowed. European Greenhouse Gas Emission Trading has a much smaller scope but a clear and enforceable target is set. Overall both instru-

ments are an important first step towards market based instruments within the rather limited EU powers in designing market based policies.

In terms of management provisions the **Integrated Pollution and Prevention Control Directive** is the most important access to control industry activities and foster better environmental performance. Through the permitting procedure – to be concluded by 2007 for all covered activities (SMEs are excluded) - industrial installations are checked against EU “Best Available Techniques” reference documents. But as this is done at national or even local level and no level playing field is provided very different levels of performance can be observed in Europe. Further the quality of those reference documents is due to lack of data and balanced expert input not always satisfactory. Additionally public involvement in permit writing is yet very low. It can be concluded that the environmental effectiveness of the permits depends on the capacities of permit writing authorities and will be largely driven by EU environmental quality and emission standards to be met. Despite these shortcomings, the Commission is planning to defer emission controls and environmental media protection to the IPPC process as regards future, air, soil, waste and water policies. This should be prevented and instead EU protection standard should be set to avoid a huge gap between theory and practice.

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The **Strategic Environmental Impact Assessment Directive** addresses governmental planning in order to integrate environmental considerations and allow better public participation. The Directive is met with reservation as its older sister Directive – on the assessment of projects, the **Environmental Impact Assessment Directive** - has been disappointing so far from a nature conservation point of view and rarely has a project been stopped or substantially altered. But the SEA Directive has been improved and both Directives have great potential especially in combination with pursuing the enforcement of other environmental targets and standards - like climate change, water and air protection - in order to achieve structural policy changes.

Instruments addressing the **environmental impacts of products** are crucial to move from end-of-pipe measures to tackling diffuse impacts, like the loss of chemicals or energy use. Only a few strong measures have been taken so far, including the **restriction of hazardous substances in electrical equipment, the market ban for carcinogenic substances, or the pesticides authorisation scheme**. But none of those measures are able to keep pace with their growing consumption and use and introduction of new substances.

Due to the complexity of addressing the multiple stages and environmental impacts of a product from cradle to grave , the discussion is rather theoretical and tends to imply expert follow-up work, as in the case of the **Integrated Product Policy** work. The EU attempted to promote voluntary instruments like the **European eco-label**, the **Environmental management and audit system (EMAS)**, **technical standardisation** or **voluntary agreements**. These instruments suffer from the weakness that they leave all freedom to business to decide and little obligation to deliver. Nevertheless, EMAS and technical standardisation in conjunction with the **New Approach** are used increasingly as implementation tools for environmental legislation. Environmental citizens' organisations regard economic and fiscal incentives as more powerful tools and have advocated their application with little result yet at EU level. For the time being the only promising instrument is **public procurement** which allows the public sector to ask for high environmental performance of their purchases and thus to create outlets for eco-products. In the case of the **Energy**

Using Products Directive vague targets are set, but most decisions are deferred to Member State Committees setting performance levels and writing mandates for standardising body CEN. It will be a great challenge for societal groups to participate in such mandate writing and standardisation work, without which no real progress can be expected. Standardisation has so far failed to deliver in the case of packaging and electrical/electronic waste standards. In terms of the specific focus of reductions in impacts from hazardous substances there is an **EU chemicals policy** in place. But this policy managed to cover only a few percent of all chemicals and failed to prevent damage effectively. The Commission proposal for a new system - REACH - would for the first time make available safety data for 30,000 chemicals, make chemical producers responsible for the safe management of chemicals, and encourage the substitution of chemicals which have potential long-term or irreversible impacts.

OUTLOOK: THE ENFORCEMENT AND THE LEGISLATIVE CHALLENGE

These days attacks on environmental legislation as being bureaucratic, disproportionately costly and reducing business competitiveness (vis-a-vis China) is largely based on populism rather than driven by a careful analysis. Indeed Europe's environmental legislation has grown piece by piece and resulted in a respectable and sometimes complex body of legislation. But there is no empiric evidence of negative impacts on economy and, compared to EU's internal market, agriculture policies and national fiscal and subsidy policies, environmental legislation is rather simple. Nevertheless, enforcement and application of these laws is very poor partly because of their devolved character, because environment does not have its own voice or standing in courts, and because national and regional policy makers have not been involved in setting up EU environmental laws and administration is ill-equipped to deliver effectively. Instead of vehemently addressing this challenge at high level we observe a trend of delegating further environmental policy decision to lower levels – European Agencies, expert committees, regional expert networks, technical standardisation and even voluntary agreements. It is unlikely that those levels can provide solutions to persistent environmental problems. On the contrary, such “diffusion” of environmental decision-making may lead to “environmental dilution”. This risks a further weakening of Europe's connection with its citizens – something needed more than ever when increasingly exposing Europe's peoples to globalisation pressures from increasingly open markets.

Existing environmental legislation represents a unique attainment for European values. These achievements need to be protected and their fruits harvested before they are rotten. The more EU environmental legislation is discussed, demanded and finally applied, the less the risk of watering down or repeal. This book can give practical assistance to citizens' organisations, environmental administrations and decision makers on both understanding and using EU environmental laws in order to achieve our environmental targets. Understanding interlinkages between different areas is important because targets are set at different levels and for different media and must be seen as supporting each other.