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2 The establishment of EU environmental policy

Christoph Knill and Duncan Liefferink

Summary guide

The environmental policy of the EU has developed in a remarkable fashion in the past four decades. An increasingly dense network of legislation has emerged, which now extends to all areas of environmental protection. This holds not only for air pollution control, water protection and waste policy, but also for nature conservation and the control of chemicals, biotechnology and other industrial risks. Environmental policy has thus become a core area of European politics. Such dynamic developments could hardly be expected in light of the legal and institutional conditions which existed in the late 1960s. This chapter describes the establishment of EU policy in three phases. It illustrates how policy makers, acting without any legislative authority, initially made a clever move to increase the EU’s capacity to act by defining environmental policy as a trade problem. In the course of time, EU environmental policy emerged as a formal policy area, with its own policy actors, policy principles and procedures.

The beginnings: environmental policy as trade policy

The Paris Summit meeting of heads of state and government of the European Economic Community (EEC) in October 1972 can be viewed as the beginning of an independent EU environmental policy. Just a few weeks before the enlargement of the Community to Denmark, the United Kingdom and Ireland (on 1 January 1973), a declaration on environmental and consumer policy was adopted at this summit. The declaration granted the European Commission the task of drawing up an action programme for environmental protection. To this end, a task force was created in the Commission, from which today’s Directorate General (DG) for the Environment has emerged.

This very first Environmental Action Programme was adopted by national government representatives in July 1973 at the first meeting of the Council of
principles. In some respect, they merely formalized ideas and rules that were already an integral feature of day-to-day policy-making in the EU.

(Jordan, 1999: 11)

On the other hand, the SEA opened new possibilities for environmental policy action at the European level. Particularly noteworthy in this regard were the new articles on the environment which generally authorize the EU to act on environmental policy matters independently of trade policy motives. This way, the Commission was no longer required to link its proposals for environmental measures to the completion of the Common Market. This enabled the Commission to intrude into new areas of environmental policy and develop measures which hardly would have been justified on the basis of earlier legal foundations (Articles 94 and 308). An important example of this is the directive passed in 1990 on the free access to environmental information. This measure, which entails extensive access rights for the public to environmentally relevant data from national authorities, could hardly have been legitimized by trade policy goals (Haigh and Baldock, 1989: 21).

A second aspect which is significant with regard to the expansion of environmental policy authority concerns the introduction of majority decision making on environmental measures relevant to the Common Market, it was generally expected that decisions by a qualified majority would enable more innovative environmental policy making which goes beyond the lowest common denominator. It is frequently pointed out in this regard that in majority decision the states with the least interest in environmental protection can be outvoted and, consequently, the environmentally slowest state no longer determines the pace and the stringency of European environmental policies (Jordan, 1999: 11; Sbragia, 2000). From the standpoint of the individual member states, searching for coalition partners to enforce national interests now turned out to be more promising than blocking negotiations (Knill and Héritier, 1996: 228).

However, in the academic debate there is little agreement on whether and the extent to which the change in the decision-making procedure at the European level increased environmental policy dynamics. While, on the one hand, observers accepted the intuitively plausible hypotheses that a higher level of environmental standards could be expected with qualified majority decisions, Holzinger (1994) points out that such a scenario cannot be taken for granted. Rather, this depends on the majority conditions and coalition possibilities in the Council of Ministers. With this in mind, it is plausible that more environmentally ambitious states in the Council of Ministers will not produce a sufficient majority to enforce stricter environmental norms. There is even the potential danger of these countries being outvoted by the countries which are interested in less strict standards. Under the cooperation procedure, ambitious states no longer have a veto right either. Thus they are no longer in a position to block the introduction of weak standards on the basis of Article 95.

From this theoretical standpoint, there are many reasons to assess the impact of majority decisions on European environmental policy in a more differentiated
fashion. The effects vary with the concrete constellation of national interests in
the Council of Ministers. In this regard, moreover, significant shifts in the balance
of power have taken place after the EU enlargements. For example, in 1995, the
accession of environmentally ambitious states such as Sweden, Finland and
Austria made the environmental policy ‘forerunners’ more influential (Holzinger,
1997). The accession of ten Central and Eastern European countries in 2004, by
contrast, might imply a reversal of this trend, given the fact that the new members
might place a stronger interest on economic rather than ecological development.

However, it is difficult to test these theoretical considerations on the basis of
empirical developments in EU environmental policy (see Chapter 4). There are no
systematic findings, only investigations into individual areas. Nevertheless, these
do include studies offering evidence of high standards in EU environmental policy
exceeding those of the most progressive member states. However, these investiga-
tions also show that the often extremely complicated environmental policy
measures by the EU cannot simply be reduced to the concepts of high and low
standards or lowest common denominator. Thus, it is not possible to draw firm
conclusions on the impact of different decision-making rules in the Council of
Ministers on EU environmental policy.

An additional complicating factor in this regard is that we have been witness to
a fundamental transformation in the patterns of environmental policy regulations
since the beginning of the 1990s. This change was triggered in particular by the
Fifth Environmental Action Programme, published in 1993. It manifests itself in
the declining trend for the EU to specify strict and extensive limits. Instead
emphasis is increasingly being placed on new instruments, which prioritize eco-
nomic incentives and the self-regulation of industry as well as greater participa-
tion rights for the public (see Chapter 17). This new designation was particularly aimed
at the increasing significance of policy areas other than economic integration
(European Communities, 1992: 8). These divergent regulatory concepts cannot
easily be compared and contrasted with regard to their concrete ramifications for
the level of European environmental protection. Regardless of that, we must keep
in mind that the SEA laid out crucial foundations for the establishment and
expansion of the EU’s capacity for action in environmental policy. This triggered
a development which was subsequently enhanced by further legal and institutional
reforms.

Institutional and political changes since the 1990s: gradual shifts

Compared to the reforms initiated by the SEA, which created a comprehensive
legal basis for a joint environmental policy, more recent legal and institutional
reform developments have resulted in relatively small changes for EU envi-
ronmental policy (see Chapter 1). However, while the legal and institutional
development thus offers evidence of a gradual, but constant increase in the
significance of EU environmental policy, a certain weakening and stagnation of
the environmental policy dynamics have become apparent in terms of the political
activities. We are confronted with the paradoxical situation that the increasing
legal and institutional anchoring of EU environmental policy coincides with the stagnation of its political dynamics. This scenario is in stark contrast with the initial phase of EU environmental policy in which a respectable environmental policy programme was drawn up despite the weak legal and institutional basis.

**Legal and institutional changes**

As for the increased institutional and legal underpinnings of European environmental policy, one should in particular emphasize the developments resulting from the Treaties of Maastricht and Amsterdam. The creation of the European Environmental Agency (EEA) marks the further institutionalization and strengthening of the EU environmental policy.

The Maastricht TEU, which has been in effect since 1993, was a continuation of the developments introduced by the SEA. The centrepiece of this treaty is the creation of the EU, which since then has provided the overall institutional framework for the entire European integration process. It is based on three pillars: as a companion to the Common Foreign and Security Policy (Pillar III) and cooperation in the areas of Justice and Home Affairs (Pillar II), the so-called first pillar is most relevant here. It consists of the European Atomic Agency (Euratom), the European Coal and Steel Community and the EEC. In the SEA, the EEC was renamed the European Community, the core of the newly founded EU. Besides the introduction of European economic and monetary union and the concretization of European civil rights, the treaty provides new and expanded authority and individual policy areas. These entail not only consumer protection, health, research, technology, education and culture, but also environmental protection.

While the Treaty of Maastricht defined the basic parameters for further integration, the Treaty of Amsterdam (ratified in 1999) introduced relatively few new innovations. Most importantly, the heads of state and government at the intergovernmental conference in Amsterdam could not agree on the necessary institutional reforms to facilitate the 2004 accession of new member states. Nevertheless as a whole, the Treaties of Maastricht and Amsterdam provide a series of new legal and institutional specifications for the common environmental policy, which essentially concern decision-making procedures, goals and principles.

The increased significance of environmental policy became apparent in the changes in the decision-making procedure which the Maastricht Treaty provided. Environmental policy measures on the basis of Article 175 were henceforth to be decided by QMV, as was already the case for measures relevant to the Common Market on the basis of Article 95. These changes in decision-making procedure were followed by a further strengthening of the Parliament in the Amsterdam Treaty (Judge et al., 1994). However, the development of new regulatory concepts cannot be viewed exclusively against the background of the stagnating environmental policy dynamics at the European level. They were also a reaction to the often ineffective implementation of harmonization measures at the national level (see Knill and Lenschow, 2000). Moreover, the Treaty of Maastricht
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expanded the tasks of the Community, emphasizing that the task of the Community was to promote environmentally sustainable growth. This wording was once again modified in the Amsterdam Treaty to ‘achieve a balanced and sustainable development’ (see Chapter 19). It thus is applicable as a guideline for policy making in all policy areas of the EU (Jordan, 1999).

The Treaty of Amsterdam additionally served to reinforce the further integration of environmental policy goals into other policy areas as a principle of common environmental policy (see Chapter 17). This was primarily achieved by no longer hiding the transversal character of environmental protection in the environmental articles, and linking it directly to the description of the spectrum of tasks of the Community at the beginning of the treaty (Article 3) (Lenschow, 1999). This promise to strengthen environmental policy concerns vis-à-vis other policy areas of the Community. This held in particular for the position of the DG Environment as compared to other DGs within the Commission (Haigh and Lanigan, 1995) (see also Chapter 13).

The creation of the EEA, which began its work in 1994, implies an additional reinforcement and institutionalization of EU environmental policy. An essential task of the agency is the formation of an overarching Environmental Information and Observation Network. On the basis of the information gathered through the existing environmental information systems of the member states, an improved inter-community exchange of environmental data was supposed to be achieved by examining, collecting and evaluating them in a centralized manner. At the same time, this should ensure a better foundation for the formulation and implementation of European environmental policies (Dilling, 2000). Following the Treaties of Maastricht and Amsterdam, a further revision was adopted in Nice in 2000. The consequences of this revision for the environmental field were very limited, however. Since Nice, an attempt was made to replace the existing treaties by a new, comprehensive Constitution. However, in the end, the existing treaties were simply amended once again in the Lisbon Treaty, which was signed in 2008 and entered into force in 2009 (see Chapter 3).

The political development: reduced dynamics

If we look back at the dynamics of EU environmental policy since the beginning of the 1990s, we find two opposing trends. While we can ascertain, on the one hand, a continual legal and institutional expansion and reinforcement of the basis for environmental policy action, we observe to a certain extent a cooling off of the environmental policy boom at the European level. This holds, in particular, when compared to the rate of environmental policy activities during the 1980s. The increasing legal and institutional anchoring of the European environmental policy thus paradoxically goes hand in hand with stagnating political dynamics (Zito, 1999: 31).

This conclusion is based on two observations. First, there appears to have been a certain decline in political significance both at the national and the European levels despite all the legal and institutional enhancements. Problems associated
with environmental protection no longer have the same priority on the political agenda of the EU and most member states as in the 1980s.

There are various reasons for this development. Besides the general slow-down in economic growth from the beginning of the 1990s and the persistent problem of high unemployment, we should also mention increased competition in the wake of international market liberalization. All these factors reduced the willingness of the member states to pass stricter environmental regulations which might have negative effects on the position of their industries in the midst of international competition. ‘[T]he political commitment to impose stringent and intrusive regulations through command and control processes has diminished very significantly’ (Sbragia, 2000: 294–5), a trend which has continued into the 2000s.

Second, as a consequence of this general political development, we can observe a certain reorientation of environmental regulation at EU level. In contrast to developments in the 1980s, the definition of uniform legally binding limits is no longer the main focus of EU environmental policy. Instead, the Commission increasingly is focusing on more flexible and less harmonization-oriented regulatory concepts, which allow the member states greater room to manoeuvre with regard to the implementation of policies. These new instruments are marked in particular by the fact that they are legally less demanding for the member states than previous measures. They concentrate less on specifying detailed standards, which all member states must equally comply with, and more on stimulating and enhancing national environmental policy reforms (see Knill and Lenschow, 2000).

As a whole, the consequence of these developments is that European environmental policy has partially lost its function as a driving force behind the constant increase in the level of environmental protection in the EU. This is the case despite the continually high number of environmental policy measures passed at the European level, of which a significant part is in fact still aimed at harmonizing national environmental standards (Jordan, 1999: 15). However, our assessment should not ignore the fact that the slow-down in environmental policy dynamics since the 1990s is not an exclusively EU phenomenon. It can be observed at the member state level as well.

**Summary: three phases of EU environmental policy**

If we sum up the developments in EU environmental policy, we can distinguish three phases. In the first phase (1972–87), the European environmental measures were legally justified primarily by trade policy motives. The main focus was initially the goal of harmonizing different national environmental regulations, which might stand in the way of the completion of the Common Market. As a consequence of increasing cross-border environmental problems and the pioneering role of individual member states (Anderson and Liefferink, 1997), a respectable programme of often very ambitious measures and activities emerged despite a weak legal and institutional basis. This was accompanied by the gradual emancipation of environmental policy as an independent policy domain detached from
The area of economic integration, even though the corresponding legal foundations did not yet exist.

The second phase (1987–92) is primarily characterized by the legal and institutional consolidation and further development of the common environmental policy. The SEA formally codified what informally was already a reality. Environmental policy was subsequently anchored in the treaty as an official field of activity of the Community. A new treaty title in the SEA also served to lay down the aims, principles and decision-making procedures for environmental policy. This resulted in a considerable expansion of the EU’s environmental policy authority. On the one hand, environmental measures no longer necessarily had to be substantiated by trade policy goals. On the other hand, a new decision-making procedure was introduced for environmental measures relevant to the Common Market, which allowed for qualified majority decisions in the Council of Ministers. Thus, it was generally expected (although only partly confirmed in practice) that stricter environmental standards would be passed that went beyond the lowest common denominator of the member states.

The third phase (post 1992) has been characterized by two opposing trends: from an institutional and legal standpoint, the developments triggered by the SEA were gradually revised and updated, in particular, in the Treaties of Maastricht and Amsterdam and through the creation of the EEA. Contrary to this trend, however, we have witnessed how environmental policy dynamic has weakened to a certain extent. EU environmental policy lost momentum on the European agenda as opposed to other policy areas. This was associated with at least a partial decline of the EU’s environmental policy as a motor for stricter and more far-reaching environmental regulations in the Community. It remains to be seen how this development will proceed in the future.

**Key questions**

1. Why did EU environmental policy develop in the late 1960s?
2. How did actors supportive of deeper integration establish a greater role for the EU?
3. Why did EU environmental policy suddenly expand?
4. Describe the main principles of EU environmental policy. To what extent do these differ from the principles of national environmental policy?
5. Describe the main phases of policy development since the 1960s. What kind of phase is EU environmental policy currently in?
6. Did environmental policy emerge in a similar fashion to other EU policy areas or did it follow its own unique trajectory?
Throughout this chapter we use the current numbering of treaty articles as introduced by the Amsterdam Treaty, in force since 1999.

References


Guide to further reading

- For other accounts, see Benson and Jordan (2010) and Jordan (1999).
- McCormick (2001) explores the successes and failures of EU environmental policy in a very readable text.
- For the first attempt to explain the genesis of policy area in this area, see Rehbinder and Stewart (1985).
- For a much more detailed analysis, see Weale et al. (2000) or various chapters in Jordan (2005). Liefferink et al. (1993) offer a very comprehensive but now somewhat dated account.

Note

1 Throughout this chapter we use the current numbering of treaty articles as introduced by the Amsterdam Treaty, in force since 1999.


