

THE IMPACT OF EU PRIMARY LAW ON THE DEVELOPMENT OF EUROPEAN ENVIRONMENTAL POLICY

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Abstract:

At its founding in 1957 the European Union had no environmental dimension, but today it has some of the most progressive environmental policies in the world. Before environmental protection and sustainable development became fundamental objectives in EU treaties, environment policy was mainly developed through the environment action programmes. Today binding environmental regulations are one of the more extensive areas of European legislation. The Lisbon Treaty which entered into force 1st of December 2009 marks the end of the confusion brought about by failure to ratify the Treaty establishing a Constitution for Europe. Articles 191 and 193 of the Treaty deal specifically with the Environment and Climate Change and they deserve some consideration by anyone concerned with these issues.

Key words: *European environmental policy, EU Treaties, climate change*

JEL classification: *K32*

European environmental policy is one of the success stories compared with other EU policies. This article is dedicated to the analysis of the evolutionary process of environmental policy in light of the EU Treaties, in particular with reference to the long awaited Treaty of Lisbon, which amends the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC), renamed to Treaty on the functioning of the European Union (TFEU). This analysis is based on the comparative, chronological and systematic methods, in order to draw out the most important stage of development of European environmental policy and current legal problems.

It is known that EU environmental policy is the result of decision-making procedures established by the multitude of EU treaties. The onset of the European integration process took place in a period where the environment was not a concern at the governmental level and the priorities of the European Communities were centered purely on economic objectives, especially for reconstruction of Europe after the World War II.

Therefore there is no article concerning the environment in the Treaty of Rome except the article about energy policy. In fact, Environment protection did not get enough consideration in decision making in 1950s. There was no environmental policy and law at that time (Fu 2008: p. 246).

Until late 1960s no European country has defined a clear environmental policy. At EU level, environmental concern has become distinctive when data signals diminishing natural resources and deteriorating water quality, air and soil. European legislation on environmental protection was initiated during a conference of Heads of State or Government held in October 1972, where it was established that a common policy is essential for environmental protection.

Decisive step towards the shaping of environmental policy at European level was only through the Single European Act (SEA). Due to the SEA, the concern for environmental protection at Community level is already reflected in the Treaty of Rome. The act adds three new articles (Articles 130R, 130S and 130T of the EC Treaty) which permit the Community "to preserve, protect and improve the quality of the

environment, to contribute towards protecting human health, and to ensure a prudent and rational utilization of natural resources". The entry into force of the Single European Act in 1987, adding a title specifically on the subject to the Treaty establishing the European Community, is generally acknowledged as the turning-point for the environment (Simonetti 2008:p.67-80).

In addition, it is important to mention the fact that the SEA specifies that the Community can only intervene in environmental matters when this action can be attained better at Community level than at the level of the individual Member States (subsidiarity). However, the European Union internal market was criticized for putting the economic aspects and trade before protection of the environment, which was perceived as a potential barrier to trade rather than as an end in itself. In response to this criticism, the Treaty on European Union upgraded the environment to a Community policy and no longer simply action by the Community. The adoption of the Maastricht Treaty is considered as a peak in the institutional development of the environmental policy. This time the EU clearly went beyond its original economic objective, i.e. creation of a common market, and its political ambitions came to the fore. For the first time, the European Union's environmental actions have gained a political status in a unitary conception due to Articles 2, 3 and 174.

With the Treaty of Maastricht, under Article 2 of the Treaty, the Community proposes that "a common market, an Economic and Monetary Union and adopting policies and joint actions to promote [...] a high level of protection and improvement of environmental quality" ; and the Community action involves *inter alia* as a new "environmental policy" (Article 3). Although considered as having limited importance in creating a favorable framework for Community action, the Treaty on European Union is worthy of being added the environment protection to the European objective, also has the merit of being institutionalized the environment as a EU policy and to be improved decision-making procedures (replacing unanimity with qualified majority, as a rule) (Pascariu 2006: p. 284).

Decisive confirmation of the importance given to the European environmental protection came a few years later, due to the adoption of the Treaty of Amsterdam (1997). The EU Treaty was open to certain criticism mentioned above, notably for its failure to simplify the decision-making procedures that applied to environment policy, and another charge leveled at the EU Treaty was that it did not explicitly incorporate the commitment to sustainable development made at the 1992 Rio Conference but merely included a passing reference to sustainable growth and respect for the environment. Therefore to answers these problems, strategic environmental impact assessment was introduced by the Treaty of Amsterdam.

Firstly, the new Treaty introduces the Article 2, the concept of sustainable development, even if the combination of words "balanced and sustainable development" so that it becomes an objective with the same status as economic development or social development.

Important progress, brought by the treaty, comes through Article 6, that converts the relatively new European environmental policy in horizontal policy, so that environmental issues are considered mandatory for other policies.

Article 6 of the consolidated version of the Treaty puts at the start of the Treaty the clause calling for environmental protection requirements to be integrated into the definition and implementation of other policies. This was already contained in Article 174 (ex Article 130r). The new article also cites such integration as one means of promoting sustainable development. Sustainable development becomes a key objective of the Union and the principle of integration is the central mechanism of its creation. The Treaty of Amsterdam also introduces decision-making procedures and external dimension of environmental integration through Article 177, that "the policy of

cooperation, complementary to that of Member States, the Community aims to develop economic and social development of developing countries, in particular the most disadvantaged among them.

Thereafter the Treaty of Amsterdam, no relevant additions were made to European environmental policy, to note only that with the amendment to the Treaty of Nice was adopted a declaration on the importance of promoting environmental protection at both European and global levels.

The draft of the Constitutional Treaty does not come with any new objectives or principles related to the European environmental policy. The Constitutional Treaty can only reinforced the strength of action of the principle of integration through Article 3, where first stated clearly that the European model is a model of sustainable development: "The Union shall work for sustainable development of Europe based on balanced economic growth and price stability, a social market economy, ensuring full employment and social progress and a high level of environmental quality improvement".

It is well-known the fact that the Treaty of Lisbon, initially known as the Reform Treaty, was designed to replace the EU Constitutional Treaty. The official name is the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. The Treaty of Lisbon entered into force on 1 December 2009, becoming the next source of primary European law, entitled to modify the pre-existing Treaties.

The main objective of the Treaty of Lisbon is to review the rules underpinning cooperation between countries. Member States are no longer able to cope alone with problems. It is why, to find solutions and address the concerns of citizens, a collective effort at European level is needed. Europe needs to modernize, to have effective tools and consistent, tailored not only to the functioning of a Union extended from 15 to 27 Member States but also to rapid transformations that today move the world (European Commission 2009).

Through the Lisbon Treaty, EU leaders agreed on new rules taking into account the political changes, economic and social and aiming at the same time, to meet the aspirations and hopes of the Europeans.

In terms of the environmental policy, The Treaty of Lisbon manages to raise the standards on environmental policy. In his text analysis, we find redrafted provisions on Union's objectives, principles, title, and competences in decision making, climate change etc. But apart from the new numbering and some new names for procedures and institutions, this does not entail any major changes (Vedder 2010; Lee 2008).

Therefore the Treaty of Lisbon contains some adjustments and clarifications, in particular under the relevant Articles 191-193 (consolidated version), included under Title XX, and entitled "Environment". Also a purely cosmetic change concerns the inclusion of the reference about the climate change.

In this context, it's important to note that in previous years the EU has had an intense international diplomatic activity ("green diplomacy") to combat climate change, playing a decisive role in achieving the two major treaties in this field - Nations Framework Convention on Climate Change and the Kyoto Protocol. In March 2000 the Commission launched the European Climate Change Program, which led to a range of new laws and measures, including emissions trading schemes, which became operative on January 1, 2005.

Returning to Lisbon Treaty, it is important to focus on the Article 3(3) TEU, where we can learn that the purposes of the Union are to contribute to sustainable development of Europe based, in particular, a high level of environmental protection and improvement of quality of the environment. Similar provisions we will find in the Article 11 TFEU, which stipulates the fact that the environmental protection

requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development. So although the idea of sustainable development was noted in previous treaties, the Treaty of Lisbon strengthens and defines better this objective. Thus sustainable development is also considered one of the fundamental objectives in its relations with the world.

But climate change is among the biggest environmental challenges, social and economic challenges facing mankind today. With the Treaty of Lisbon, climate change is a global benchmark of EU environmental policy (Chalmers, Monti 2008: p. 9). Note that these changes on climate change were made after negotiations with the Irish government, so it became an explicit objective of the European Union.

The Treaty of Lisbon includes supporting international action to combat climate change on the list of objectives that define the European policy on the environment. Thus, the Treaty states clearly that in this area, the EU has played a major role in the world.

Under Article 19, EU environmental policy contributes to the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilization of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems and in particular combating climate change.

The phrase is new. This confirms and reinforces established political commitment to the importance of climate change, in respect of international action specifically (Lee 2008: p. 133). Thus, the effect of the reference to climate change is most likely above all declaratory.

EU environmental policy also seeks a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonization measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

In preparing its policy on the environment, the European Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Union as a whole and the balanced development of its regions.

As mentioned above, through the Treaty of Lisbon, the Charter of Fundamental Rights has become a source of law binding on the Member States of the European Union. Thus it also contains provisions on European environmental policy. Article 37 explicitly refers to environmental protection, stating that EU policies should provide a high level of environmental protection and improvement of its quality, to be insured under the principle of sustainable development.

In fact this article dedicated to the environment is not covered by the language "rights", but includes one of the principles of integration of environmental policy, namely that of sustainable development (Lee 2008: p. 138).

In terms of environmental principles, the Treaty of Lisbon presents an interesting surprise in that it contains three environmental integration principles. In

Article 11 of TFEU enhanced version is stipulated that environmental protection requirements must be integrated into the definition and implementation of Union policies and activities, in particular to promote *sustainable development*; In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the *welfare requirements of animals* [...] (Article 13 of TFEU); and in Article 194 (2) mentioned the third principle, namely the principle of *exploiting its energy resources* (Vedder 2008: p. 3).

In general, we can say that after entry into force of the Lisbon Treaty we deal with more efficient working methods and simplified voting rules, with modern and effective institutions for a Union of 27 members, able to work better in areas of high priority. As the subject of research, the Treaty of Lisbon provides a better life for Europeans since it improves EU's ability to act in various areas of priority for the European Union and its citizens - such as energy policy, public health, climate change, services of general interest, research, etc.

Following analysis, several conclusions could be drawn that could serve as topics for reflection and debate. Namely:

The founding of the European Union in 1957 did not include environmental provisions, but now the European Union is one of the most progressive environmental policies in the world;

EU Environmental Policy is the result of decision-making procedures established by the EU Treaties;

The Single European Act (1986) marked the beginning of a more prominent role for environmental protection in EU policy-making, introducing the principal that environmental protection should be considered in all new Community legislation;

After the Treaty of Amsterdam, the environmental policy is no longer a byproduct of the construction of the common market, but has become an important instrument for realizing the European sustainable development and the new Treaty of Lisbon raises the standards of the European Environmental Policy.

Immediate or medium term is expected that the European Union is the primary source of pan-European environmental policy, leading almost all national decisions in the same direction as does today, and one of the big challenges is the implementation of environmental policy in new Member States;

In 50 years, Europe has changed a lot - like the whole world. Today, more than ever, a constantly evolving World, Europe faces new challenges: globalization of the economy, demographic change, climate change, the need for sustainable energy sources and new security threats; so the EU could be called a global promoter of sustainable development;

Climate change is among the biggest environmental challenges, social and economic challenges facing mankind today. With the Treaty of Lisbon, climate change is a global benchmark of EU environmental policy;

And as regards its arguments on the article's title should be noted that in the period leading up to the negotiations of the Treaties of Maastricht, Amsterdam and Nice several environmental campaigns were launched in order to "green the Treaties". (Vedder 2008: p. 8). But the attempt to "green the Treaty of Lisbon" was restricted to the obscure procedure of the negotiations of its text. Treaty of Lisbon was especially concerned about the institutional architecture of the European Union and European integration in general.

Impact of the Treaty of Lisbon on European environmental policy is minimal, but nevertheless contribute to the strengthening of European environmental law and continuing debate among specialists, giving impetus to further research

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